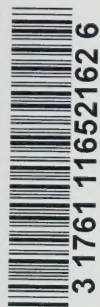


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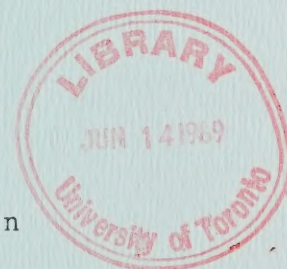


ENVIRONMENTAL ASSESSMENT BOARD

VOLUME: 106

DATE: June 1st, 1989

BEFORE:
M.I. JEFFERY, Q.C., Chairman
E. MARTEL, Member
A. KOVEN, Member



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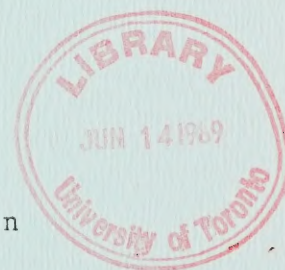


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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental
Assessment for Timber Management on Crown
Lands in Ontario;

- and -

IN THE MATTER of an Order-in-Council
(O.C. 2449/87) authorizing the
Environmental Assessment Board to
administer a funding program, in
connection with the environmental
assessment hearing with respect to the
Timber Management Class
Environmental Assessment, and to
distribute funds to qualified
participants.

Hearing held at the Ontario Energy Board, 2300
Yonge Street, 25th Floor, Hearing Room No. 1,
Toronto, Ontario, on Thursday, June 1st, 1989,
commencing at 9:00 a.m.

VOLUME 106

BEFORE:

MR. MICHAEL I. JEFFERY, Q.C.	Chairman
MR. ELIE MARTEL	Member
MRS. ANNE KOVEN	Member

A P P E A R A N C E S

MR. V. FREIDIN, Q.C.)	MINISTRY OF NATURAL
MS. C. BLASTORAH)	RESOURCES
MS. K. MURPHY)	
MS. Y. HERSCHER)	
MR. B. CAMPBELL)	MINISTRY OF ENVIRONMENT
MS. J. SEABORN)	
MR. R. TUER, Q.C.)	ONTARIO FOREST INDUSTRY
MR. R. COSMAN)	ASSOCIATION and ONTARIO
MS. E. CRONK)	LUMBER MANUFACTURERS'
MR. P.R. CASSIDY)	ASSOCIATION
MR. J. WILLIAMS, Q.C.	ONTARIO FEDERATION OF
MR. B.R. ARMSTRONG	ANGLERS & HUNTERS
MR. G.L. FIRMAN	
MR. D. HUNTER	NISHNAWBE-ASKI NATION and WINDIGO TRIBAL COUNCIL
MR. J.F. CASTRILLI)	
MS. M. SWENARCHUK)	FORESTS FOR TOMORROW
MR. R. LINDGREN)	
MR. P. SANFORD)	KIMBERLY-CLARK OF CANADA
MS. L. NICHOLLS)	LIMITED and SPRUCE FALLS
MR. D. WOOD)	POWER & PAPER COMPANY
MR. D. MacDONALD	ONTARIO FEDERATION OF LABOUR
MR. R. COTTON	BOISE CASCADE OF CANADA LTD.
MR. Y. GERVAIS)	ONTARIO TRAPPERS
MR. R. BARNES)	ASSOCIATION
MR. R. EDWARDS)	NORTHERN ONTARIO TOURIST
MR. B. McKERCHER)	OUTFITTERS ASSOCIATION
MR. L. GREENSPOON)	NORTHWATCH
MS. B. LLOYD)	

APPEARANCES: (Cont'd)

MR. J.W. ERICKSON, Q.C.)	RED LAKE-EAR FALLS JOINT
MR. B. BABCOCK)	MUNICIPAL COMMITTEE
MR. D. SCOTT)	NORTHWESTERN ONTARIO
MR. J.S. TAYLOR)	ASSOCIATED CHAMBERS OF COMMERCE
MR. J.W. HARBELL)	GREAT LAKES FOREST
MR. S.M. MAKUCH)	
MR. J. EBBS	ONTARIO PROFESSIONAL FORESTERS ASSOCIATION
MR. D. KING	VENTURE TOURISM ASSOCIATION OF ONTARIO
MR. D. COLBORNE	GRAND COUNCIL TREATY #3
MR. R. REILLY	ONTARIO METIS & ABORIGINAL ASSOCIATION
MR. H. GRAHAM	CANADIAN INSTITUTE OF FORESTRY (CENTRAL ONTARIO SECTION)
MR. G.J. KINLIN	DEPARTMENT OF JUSTICE
MR. S.J. STEPINAC	MINISTRY OF NORTHERN DEVELOPMENT & MINES
MR. M. COATES	ONTARIO FORESTRY ASSOCIATION
MR. P. ODORIZZI	BEARDMORE-LAKE NIPIGON WATCHDOG SOCIETY
MR. R.L. AXFORD	CANADIAN ASSOCIATION OF SINGLE INDUSTRY TOWNS
MR. M.O. EDWARDS	FORT FRANCES CHAMBER OF COMMERCE
MR. P.D. McCUTCHEON	GEORGE NIXON

(iii)

APPEARANCES: (Cont'd)

MR. C. BRUNETTA

NORTHWESTERN ONTARIO
TOURISM ASSOCIATION

I N D E X O F P R O C E E D I N G S

<u>Witness:</u>	<u>Page No.</u>
<u>JOHN TRUMAN ALLIN,</u>	
<u>PETER PHILLIP HYNARD,</u>	
<u>RICHARD BRUCE GREENWOOD,</u>	
<u>CAMERON D. CLARK,</u>	
<u>FRANK D. KENNEDY,</u>	
<u>WILLIAM DOUGLAS BAKER,</u>	
<u>ROBERT ELLIOTT,</u>	
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(v)

I N D E X O F E X H I B I T S

<u>Exhibit No.</u>	<u>Description</u>	<u>Page No.</u>
596	NAN Interrogatory Nos. 4 and 8 and answers thereto.	17837
597A	OFAH Interrogatory No. 1 and answer thereto.	17849
597B	Policy referred to above	17850

1 ---Upon commencing at 9:10 a.m.

2 THE CHAIRMAN: Good morning everyone.
3 Please be seated.

4 I assume that not everybody is as
5 unfamiliar with the facilities as the Board is, having
6 never sat here before, and so if we disappear at one of
7 the breaks and can't find our way back you will
8 understand. But I do hope there is enough room for
9 everybody who wants to attend these proceedings for the
10 next two days.

11 We have two or three preliminary matters
12 that the Board would like to deal with before, Ms.
13 Svenarchuk, we commence with your cross-examination.

14 The first thing is that the Board wants
15 to announce that, barring some mishap with our word
16 processor this morning, the Board intends to issue its
17 ruling on the pesticides issue at 2:00 p.m. this
18 afternoon. It is not overly lengthy, but the Board has
19 decided that the best way to proceed on that would be
20 to read it into the record and have copies available
21 for counsel and other parties as well.

22 We want to make sure that parties and
23 members of the public to these proceedings have access
24 to that ruling through the transcripts in a timely
25 fashion.

1 The second matter we want to deal with
2 is: We have just received, I believe today, a letter
3 from the Ministry of Natural Resources concerning the
4 discussions we had in Thunder Bay on the satellite
5 hearings. The Board hasn't really had an opportunity
6 to go through this letter in any detail.

7 Mr. Freidin, are you suggesting that we
8 discuss this at this time or later on when we get back
9 to Thunder Bay?

10 MR. FREIDIN: The latter, Mr. Chairman.
11 I just handed out copies to some of the parties this
12 morning. Copies went into the -- should have gone into
13 the mail this morning, the regular mail, to all the
14 full-time parties this morning. So I would suggest
15 this matter be dealt with when we get back to Thunder
16 Bay.

17 THE CHAIRMAN: All right. It is
18 obviously premature to deal with it today.

19 MR. FREIDIN: I am just wondering -- and
20 then there was the other letter I filed with the Board,
21 again it went out in the mail this morning, it was
22 handed out to some of the parties in relation to the
23 terms and conditions. I think the letter speaks for
24 itself, Mr. Chairman.

25 THE CHAIRMAN: All right. The Board has

1 reviewed this letter and we are taking the following
2 view, Mr. Freidin: That we are not adverse to giving
3 the Ministry only final extension on the terms and
4 conditions but we feel that the absolute deadline for
5 the submission of the Ministry's draft terms and
6 conditions should be no later than June 30th, which is
7 prior to the summer break and still some months in
8 advance of the conclusion of the Ministry's case.

9 We feel that you have known about this,
10 the Ministry has, for some six months at least. We
11 realize there is a lot of material to go through, but
12 we also realize that the other parties and the Board
13 have some interest in seeing the draft terms and
14 conditions and we don't wish to further prejudice
15 anyone in terms of having an ample opportunity to
16 consider them before the other parties have to file
17 their draft terms and conditions.

18 MR. FREIDIN: Thank you very much, Mr.
19 Chairman.

20 THE CHAIRMAN: So June 30th will be the
21 final deadline for the submission of those. Thank you.

22 Very well. Unless there are any other
23 preliminary matters we will --

24 MS. BLASTORAH: Mr. Chairman, I have one
25 preliminary matter before we begin.

1 THE CHAIRMAN: Yes.

2 MS. BLASTORAH: It relates to Panels 12,
3 13 and 14. Barring undue delay, I think today and
4 tomorrow we will finish this panel and begin Panel
5 12/13 on Monday in Thunder Bay.

6 I know it is very early but I have some
7 concern about when that panel will end and Panel 14
8 will begin -- or those two panels combined will end
9 because there is a possibility that Panel 14 will go on
10 perhaps as early as the the middle of June.

11 So I am concerned about two things:
12 First of all, the scoping of issues for Panel 14; and,
13 secondly, if it is at all possible if we could get some
14 preliminary estimate from the parties as to how long
15 they expect to be in cross-examination on Panels 12 and
16 13 we might have some idea when Panel 14 is likely to
17 commence.

18 MR. FREIDIN: We are hopeful, Mr.
19 Chairman, of putting in Panel 12 and 13 next in-chief
20 next week even with the different starts for Monday and
21 Tuesday.

22 THE CHAIRMAN: I see. Well, I am not
23 sure that all of the parties can accurately estimate
24 how long they are going to be in cross, but perhaps we
25 might--

1 MS. BLASTORAH: Even a preliminary
2 estimate would be of some assistance, Mr. Chairman.

3 THE CHAIRMAN: --perhaps we might get
4 some indication.

5 Ms. Cronk, could you indicate how long
6 your side might be?

7 MS. CRONK: It really is, Mr. Chairman,
8 nothing more than a preliminary estimate, but I would
9 be very surprised if we were more than one day.

10 THE CHAIRMAN: More than one day.

11 The Federation?

12 MR. LINDGREN: I haven't had the
13 opportunity to speak with Mr. Castrilli and I can't
14 even offer a preliminary estimate at this time.

15 THE CHAIRMAN: Okay. Mr. Hanna?

16 MR. HANNA: We will not be longer than a
17 day, Mr. Chairman.

18 THE CHAIRMAN: Not longer than a day.
19 And I don't know about Mr. -- well, the Ministry of the
20 Environment, Ms. Seaborn?

21 MS. SEABORN: Approximately half a day,
22 Mr. Chairman.

23 THE CHAIRMAN: Is anybody here from the
24 Nishnawbe-Aski Nation?

25 MS. SWENARCHUK: Mr. Chairman, Ms. Kleer

1 will be here this afternoon from Nishnawbe-Aski, she is
2 not here now.

3 THE CHAIRMAN: Right. And the Board
4 wants to further advise that we have had a request from
5 counsel for NAN and the Windigo Tribal Council for
6 permission to cross-examine this panel for no more than
7 a half hour this afternoon, if we can fit it in.

8 Has anybody discussed that with you, Ms.
9 Swenarchuk?

10 MS. SWENARCHUK: Yes, I understand she
11 will be here this afternoon.

12 THE CHAIRMAN: Is that going to unduly
13 interrupt your cross-examination bearing in mind that
14 we are going to deliver this ruling at 2:00 p.m. as
15 well?

16 MS. SWENARCHUK: Well, I hadn't
17 understood from NAN that they necessarily wanted this
18 afternoon, merely that she would be here this
19 afternoon.

20 THE CHAIRMAN: I see. So she could be
21 fitted in perhaps tomorrow?

22 MS. SWENARCHUK: I think so.

23 THE CHAIRMAN: Okay.

24 MS. BLASTORAH: Mr. Chairman, I would
25 just like to indicate we were not advised of that and

1 certainly that's not a problem, I only have some
2 concern that we may not have copies of exhibits or
3 other documents here that may be required for
4 cross-examination, and so there may be some necessity
5 to take short adjournment or something so we can have
6 material faxed to us if need be.

7 THE CHAIRMAN: Okay. Well, I think the
8 Board will instruct Mr. Mander to get in touch with Ms.
9 Kleer as soon as possible to find out what exhibits
10 might be required and indicate to her that she will
11 probably --

12 MR. MANDER: She informed me that she
13 will be entering a couple of interrogatories but will
14 be referring to no exhibits outside of the witness
15 statements.

16 THE CHAIRMAN: All right. For those who
17 didn't hear, Mr. Mander indicated that Ms. Kleer said
18 she would be referring only to a couple of
19 interrogatories and would be referring to no other
20 exhibits other than the witness statements.

21 MS. SEABORN: Mr. Chairman, with respect
22 to Panel 11, you will recall when we finished in
23 Thunder Bay a couple of weeks ago an undertaking was
24 given to file a copy of the prescribed plan for
25 Battersby Creek.

1 Ms. Blastorah provided that to me last
2 week, I have reviewed it, I have two or three questions
3 for Mr. Elliott on that issue and I could go tomorrow
4 or at the conclusion of Ms. Swenarchuk and Ms. Kleer's
5 cross-examination.

6 THE CHAIRMAN: All right. Well, we don't
7 want to interrupt your cross-examination any more than
8 is necessary, so perhaps we will deal with NAN tomorrow
9 at some stage if we can.- ..

10 MS. SWENARCHUK: It is possible that I
11 will finish before the end of today, I am really not
12 sure.

13 THE CHAIRMAN: All right. Well, let's
14 proceed at this point.

15 MS. BLASTORAH: Mr. Chairman, there were
16 just two other matters. One was if Mr. Mander could at
17 some point let us know which interrogatory numbers Ms.
18 Kleer intends to use during the cross-examination so
19 that we can have copies made for the witnesses if need
20 be, and the other issue was the scoping of Panel 14. I
21 was wondering if we could set a date for that.

22 I don't believe we have a date for filing
23 the statements of issue. I may be wrong on that, but I
24 would like to suggest the 8th of June.

25 THE CHAIRMAN: No, we had not set a date

1 for that, I believe, as well because we were really
2 anticipating it would be after the summer break. It
3 looks like we are--

4 MS. BLASTORAH: As were we, Mr. Chairman.

5 THE CHAIRMAN: --speeding up which is of
6 course a good thing, so we will be quite disposed to
7 setting the dates ahead of time.

8 MS. SWENARCHUK: Mr. Chairman, could I
9 just point out that some of us will be involved in the
10 funding hearing.

11 THE CHAIRMAN: That's on June 12th; is it
12 not?

13 MS. SWENARCHUK: On the 12th and 13th and
14 we have filing dates before that for the funding
15 hearing. So I would appreciate it if the filing date
16 for Panel 14 would be after the 13th.

17 THE CHAIRMAN: All right. That's a fair
18 request. Let us consider what dates we should set
19 those during one of the breaks and we will come back
20 later today and indicate to you what dates.

21 MS. BLASTORAH: Thank you, Mr. Chairman.

22 THE CHAIRMAN: Any further...?

23 MR. FREIDIN: With just one observation,
24 Mr. Chairman. I think that five of my witnesses have
25 never looked better.

1 THE CHAIRMAN: At least from your
2 perspective.

3 Okay, Ms. Swenarchuk, we are ready for
4 you.

5 MS. SWENARCHUK: First of all, Mr.
6 Chairman, I want to thank the Board for your
7 cooperation with my illness two weeks ago and I
8 apologize for any inconvenience that it caused to the
9 Board.

10 JOHN TRUMAN ALLIN,
11 PETER PHILLIP HYNARD,
12 RICHARD BRUCE GREENWOOD,
13 CAMERON D. CLARK,
14 FRANK D. KENNEDY,
15 WILLIAM DOUGLAS BAKER,
16 ROBERT ELLIOTT,
17 RONALD ORVAL WAITO,
18 DAVID M. HOGG, Resumed

19 CROSS-EXAMINATION BY MS. SWENARCHUK:

20 Q. I have one preliminary question for
21 Dr. Allin before coming to the major thrust of the
22 cross-examination.

23 Dr. Allin, I am speaking to you now as a
24 scientist, that is you being a scientist not me, and it
25 has to do with the issue of site specificity of studies
on forestry. We had considerable discussion in the
hearing to date and we will have more about various
site-specific studies of various elements of
forest-related matters.

1 Now, would you agree with me that both
2 the scientific method and the complexity of forest
3 eco-systems require that studies and the accumulation
4 of scientific knowledge occur by very site-specific
5 studies?

6 DR. ALLIN: A. Yes. Invariably the way
7 scientific information is collected is to do
8 site-specific studies on areas chosen for certain
9 reasons, obviously to represent certain conditions that
10 the scientist wants to investigate.

11 Q. And in fact as all of us pursue the
12 necessity to learn more about forestry and the forest
13 eco-system, really the best methodology that can be
14 used for adding to that knowledge is site-specific
15 studies?

16 A. Yes, in the sense that studies will
17 almost of necessity be site-specific, but with careful
18 selection of site conditions, choosing representative
19 conditions for whatever it is you want to investigate,
20 it is possible to generalize from those site-specific
21 investigations to a wider variety of conditions. I
22 mean, I think one could make some reasonable inferences
23 from one site to another.

24 Q. Yes. And would you agree that the
25 degree to which we are able to generalize varies

1 tremendously and is particularly tied to the extent to
2 which any particular study area is representative of
3 large similar areas?

4 A. Yes, that would be true.

5 Q. Thank you.

6 MS. SWENARCHUK: Now, Mr. Chairman, with
7 regard to the Panel 11 material specifically, I am
8 going to take a moment just to give you a kind of
9 introduction to the context of my cross-examination
10 here, and essentially it is an attempt to identify what
11 information is available and not available regarding
12 regeneration success and lack of success in Ontario.
13 And this will be to add to the picture presented to the
14 Board in Panel 4 which had to do with wood supply and
15 there will, therefore, be some overlap of that
16 material, although I think it is fairly minimal.

17 Just again to set the context, you will
18 recall the testimony from Panel 10 witnesses that with
19 regard to regeneration options Mr. Oldford said at page
20 14496, line 11 and 12 that the majority option, he
21 agreed, is clearcutting and planting, and he said on
22 page 14532 that strip cutting, for example, at this
23 point amounts to about a three to five per cent range
24 of the regeneration activities.

25 Now, I particularly want to attempt to

1 identify information available to us regarding
2 regeneration on forest management agreement areas. The
3 Board will recall that no data on FMA regeneration
4 success rates was made available in Panel 4. If I can
5 just read the quote that established that. This is Mr.
6 Castrilli at page 5772 questioning Mr. Gordon and he
7 asked:

8 "What is before this Board with respect
9 to success rate of regeneration on FMA
10 agreements? What is in the Panel 4
11 evidence with respect to success rates of
12 regeneration on FMA agreements?"

13 Mr. Gordon said:

14 "As far as I can recall there was nothing
15 specifically put in front of the Board to
16 show such results."

17 And I would further bring to your
18 attention our Interrogatory No. 15 which has been the
19 subject of much discussion.

20 If I can just digress for a moment, Mr.
21 Chairman, these interrogatories have been filed and
22 refiled by different parties in different packages and
23 I simply gave Mr. Mander a list of the ones that I
24 would be referring to and I think we compiled yet
25 another package for you.

1 MR. MANDER: I put in your whole package
2 for that one.

3 THE CHAIRMAN: Okay. So I would ask you,
4 when I am referring to the interrogatories, to simply
5 go to the number in that package. And at this time I
6 would like you to look at Interrogatory No. 15 briefly.

7 THE CHAIRMAN: Do the other parties have
8 that as well, Mr. Swenarchuk?

9 MS. SWENARCHUK: They have all had lists
10 of the document number.

11 THE CHAIRMAN: Can everybody in the room
12 hear Ms. Swenarchuk? Is there sound coming down at
13 that end of the room.

14 MS. BLASTORAH: She is rather faint, Mr.
15 Chairman. If you could speak up a bit. I know it is
16 not a very good microphone, the distance is...

17 MS. SWENARCHUK: The distance is awkward.

18 THE CHAIRMAN: Can you turn up the volume
19 from over there?

20 MS. SWENARCHUK: Now, as a general
21 introduction Mr. Chairman, if you look at the wording
22 of the question of No. 15, you will note that it was
23 worded rather generally. We asked for past results of
24 artificial and natural regeneration efforts by
25 silvicultural system for the past ten years for

1 specific species and management units -- districts, and
2 we left it to the Ministry to determine what type of
3 information was available and what type they would
4 respond with.

5 But if you look at the second paragraph
6 of the follow-up answer, you will notice that
7 information of this nature is not readily available for
8 FMA areas, therefore, the information presented is for
9 activities on the Crown management units located in
10 each district.

11 THE CHAIRMAN: Where are you reading from
12 the follow-up answer? We have one paragraph on ours
13 for the answer.

14 MS. SWENARCHUK: Okay. Then there was
15 a --

16 MS. BLASTORAH: Mr. Chairman, if you
17 check Exhibit 551, which I believe is the one we filed,
18 it has the complete answer including the follow-up.

19 THE CHAIRMAN: We, unfortunately, I don't
20 think have 551. We have 550, 552 and 553.

21 MS. SWENARCHUK: What I think would be
22 most convenient, Mr. Chairman, would be if I just
23 photocopied this page and provide it to you. It must
24 in your material somewhere.

25 THE CHAIRMAN: Okay.

1 MS. SWENARCHUK: But in any event, I was
2 simply bringing it to your attention that we asked for
3 the whole range of results and the Ministry was only
4 able to provide results on Crown management units, and
5 that leaves us still with a lack of data with regard to
6 forest management agreement areas.

7 THE CHAIRMAN: So that's the point you
8 are trying to make. Very well.

9 MS. SWENARCHUK: Do we have a team
10 captain again on the team?

11 MR. GREENWOOD: Yes, we do. Given the
12 comment that Mr. Clark said last time that we prefer to
13 call it a nominal team captain.

14 MS. SWENARCHUK: Q. I see. And just to
15 get one matter out of the way, I assume, Mr. Greenwood,
16 that the Ministry undertook no studies of actual
17 environmental effects of regeneration activities for
18 this panel; is that right?

19 MR. GREENWOOD: A. Given my
20 understanding of how you define studies in Panel 10,
21 which was a collection of scientific data; is that what
22 you are referring to, then I would agree that there has
23 not been.

24 I think we suggested that the ESSA
25 exercise, for instance, could be interpreted by some

1 people as a study. It was a gathering of information
2 and knowledge, that the various witnesses gathered
3 knowledge and information from field people, from their
4 own experience, literature reviews.

5 So if you refer to those as studies, then
6 yes; if you are thinking of a particular collection of
7 scientific data, an analysis of that data--

8 Q. Actual effects.

9 A. --then no.

10 Q. Now, can you define for us whether
11 there is a province-wide objective for the regeneration
12 program of the Ministry?

13 A. I am not sure if there is a policy
14 that speaks to that directly. There are certainly
15 objectives in FMAs and objectives specified in
16 management plans for each unit, but -- and it could
17 just be my awareness. I am not aware of a provincial
18 policy that states such.

19 Q. You are a forester who is working in
20 the field and you do not have a province-wide policy
21 that you relate to or for which you take direction in
22 your work on regeneration?

23 A. I said I wasn't aware of one.

24 Q. All right. Now, one last preliminary
25 issue. Exhibit 29 is the 1987 statistics of the

1 Ministry, I don't think it is necessary to look at it.
2 The last line on that page provides timber revenues for
3 the year and it includes \$14-million for federal
4 government money. Now, I assume this is money under
5 COFDRA; is that right?

6 A. Again, without referring to it I am
7 not too sure. I have to see the context.

8 Q. You should have Exhibit 27 with you.

9 THE CHAIRMAN: Exhibit 29; is that right?

10 MS. SWENARCHUK: 29, yes. Sorry, yes.
11 It is Exhibit 29, page 127.

12 Q. The last chart on the page has to do
13 with timber revenue and one of the categories is
14 federal agreement and I assume that's federal agreement
15 money?

16 MR. GREENWOOD: A. That would be my
17 interpretation, yes.

18 Q. And you will agree with me that that
19 funding is used, at least partially, in the
20 regeneration program?

21 A. Correct.

22 Q. And my understanding is that the most
23 recent agreement with the federal government expired on
24 March 31st of this year and has not at this point been
25 renewed?

1 A. That's correct.

2 Q. Can you indicate for us what effect
3 we should expect on the regeneration program of this --
4 first of all, what's the status of the agreement?

5 A. Well, as you suggested, the agreement
6 has expired and at this point in time there has not
7 been another signed agreement.

8 It is my understanding that - and again I
9 don't have figures, it is just through discussion with
10 various people in main office - that the funding that
11 normally would have come from the federal government
12 for this year has been made up internally.

13 So in terms of the effect on the program
14 this year, we don't expect it to be a significant
15 effect for this particular year.

16 Q. And is the Ontario government
17 currently attempting to renegotiate an agreement or do
18 we assume that from now on the funding available for
19 regeneration will only be provincial funding?

20 A. I am not aware of where those
21 negotiations are at right now.

22 Q. Does anyone else on the panel know
23 more about that situation?

24 (no response)

25 I would like to turn then to examination

1 of FMA groundrules, silvicultural groundrules. I
2 believe, Mr. Hynard, you would perhaps be the
3 appropriate person to deal with this with me. It is
4 Exhibit 513, the Pinelands Timber FMA.

5 MS. SWENARCHUK: And the silvicultural
6 groundrules, Mr. Chairman, occur in Schedule C to that
7 agreement. I can't give you a page number for it, it
8 isn't numbered. It is simply there in Schedule C.

9 Q. Mr. Waito, if you have a copy I will
10 have some questions for you on this as well.

11 Now, again, to set the context. If you
12 look at paragraph 4 of the groundrules, (ii), we see
13 that:

14 "The silvicultural procedures will be the
15 responsibility of the company and
16 certification for payment will conform to
17 the guidelines set forth in the forest
18 management manual of 1980."

19 So if I could just paraphrase that. Mr.
20 Hynard, that to me means that the company carries out
21 the activities and the Ministry pays; is that right?

22 MR. HYNARD: A. Yes, that's right. The
23 company does conduct the silvicultural activities and
24 the Ministry does pay at the rates that are specified
25 in the groundrules.

1 Q. Now, if we turn to the next page,
2 paragraph 6, we see silvicultural specifications and
3 standards. And, Mr. Waito, paragraph 6.1 and following
4 have to do with prime site management?

5 MR. WAITO: A. That's right.

6 Q. And the second paragraph from the
7 bottom of the page says:

8 "The company may elect and is encouraged
9 by the Ministry to undertake prime site
10 management as defined above."

11 Would I be correct in assuming that prime
12 site management is the theory by which regeneration is
13 organized on the forest management agreements?

14 A. No, it is not the theory by which
15 forest management is organized on FMAs in general or
16 even on, I would say, a Pinelands FMA. Prime site
17 management, as was described in our direct evidence, is
18 simply a concept that's being promoted within the
19 Ministry to try and organize and carry out timber
20 management activities in a - lack of a better
21 description - in a more descriptive way, I suppose.

22 Specifically with respect to the
23 Pinelands FMA, I don't know what their particular idea
24 or concept of prime site management is. I have looked
25 at a number of FMAs and I have not seen the term prime

1 site in other documents.

2 So I would suggest that in this
3 particular FMA they recognized when they were
4 developing the FMA the concept of prime site
5 management. It is one that is evolving right now and
6 recognizing it, actually included it in their FMA in
7 particular. So generally it is not a concept for all
8 FMAs.

9 Q. Well, you indicated in your evidence
10 in Panel 11 at page 168 that:

11 "Prime site management is not a new
12 concept to forest managers, in the past
13 it was inherently incorporated into
14 management decisions by foresters."

15 A. That's correct.

16 Q. And would I be correct in assuming
17 that that is still the case?

18 A. That's still the case. I suppose the
19 difference between this particular FMA and other FMAs
20 is they have put in their groundrules a specific
21 reference to prime site management in an effort to give
22 it further recognition.

23 Whether they actually practise some form
24 of prime site management -- in terms of the way I was
25 describing it in the evidence is a more formalized way

1 of deciding where timber management was going to be
2 practised. I am not sure whether or not on their
3 entire FMA they are practising prime site management or
4 they are just practising prime site management on prime
5 sites. I can't really comment as to what level of
6 prime site management this particular FMA is at.

7 Q. Well, prime site management really
8 has to do, I think as you defined it, as directing
9 investment to those sites where there will be maximum
10 return; is that not correct?

11 A. That's correct.

12 Q. As you put it, directing timber
13 management decisions in accordance with the highest
14 overall return on investment?

15 A. That's an element of prime site
16 management, that's correct.

17 Q. So basically spending your money
18 where you are going to get the best returns?

19 A. That's the objective.

20 Q. And if we look at the definition of
21 prime site management in this FMA, the second paragraph
22 after 6.1 amongst the considerations to be taken into
23 account are the silvicultural potential of the site and
24 number one is the growth potential.

25 So would you agree then that prime site

1 management is productivity related?

2 A. Yes, there is an element for sure.

3 Q. All right. So you look at the
4 silvicultural potential of the various sites and
5 presumably you want to spend the money on the most
6 productive sites?

7 A. You will be spending some of your
8 money on the most productive sites, but you won't be
9 spending all of your money on the most productive
10 sites.

11 Productivity is just one element of prime
12 site management. In fact, you may, after doing your
13 prime site analysis, decide that the best bang for your
14 buck, if I can put it that way, is achieved by
15 regenerating sites that would not be considered
16 productivity-wise as productive as other sites.

17 So all of your dollars that you are
18 spending on your regeneration program are not
19 necessarily spent on the most productive sites.
20 Productivity is just one element of prime site
21 management.

22 Q. Okay. Well, if we look at the next
23 page of this agreement. If I can just summarize my
24 reading of this entire section on prime site management
25 on this agreement, suggests that the most high cost

1 regeneration efforts, which will probably be planting,
2 would probably be concentrated on the prime sites in
3 order to bring the best productive returns.

4 And that on page 3 on the first paragraph
5 at the top, the agreement essentially suggests that
6 less costly methods or perhaps natural regeneration
7 will be used on the non-prime sites.

8 "It is recognized that in some cases an
9 acceptable silvicultural prescription to
10 cut some softwood working group stands
11 and to allow them to regenerate
12 naturally. Consequently, the total area
13 treated over the period of these
14 groundrules may not balance with the
15 total cut-over. This practice will
16 generally be proposed on non-prime
17 sites."

18 So presumably the non-prime sites under
19 this FMA are going to get -- are more likely to get a
20 natural regeneration cheaper treatment than the prime
21 sites which would probably get the more expensive ones;
22 namely, planting?

23 A. In this FMA it appears that that's
24 the way they have interpreted prime site management and
25 productivity and productivity relationship and they

1 appear to have labeled sites that are not as productive
2 as other sites as non-prime.

3 When I described prime site management in
4 my evidence I did not mean to imply that sites that are
5 less productive in one particular part of the unit are
6 not necessarily non-prime sites. They may be prime
7 sites because of their location to the mill.

8 The primeness is really a mixture of
9 productivity and the economic elements of it, so that
10 you may have -- for example, southern Ontario has
11 probably got a very prime site for growing trees but it
12 is a long way from some of the mills in Thunder Bay, so
13 it wouldn't be considered prime in that respect;
14 whereas a site close to the mill in Thunder Bay, for
15 example, may be significantly less productive than the
16 land down here but it is considered prime because of
17 its closeness.

18 So when you are talking prime site you
19 really have to look at the soil productivity as well as
20 the other factors, and that's what I was trying to
21 describe in my evidence on prime site.

22 Q. So then are you saying that this FMA
23 has a somewhat different definition than the one that
24 you would use for prime site management?

25 A. I wouldn't say it is necessarily a

1 different definition. How you approach prime site and
2 what factors you include or think about when you are
3 developing the concept for your own piece of ground can
4 be fairly complex. It depends on your point of view.

5 And it would appear in this particular
6 document that they have placed an emphasis on the soil
7 productivity in terms of defining it as primeness and
8 in terms of defining its primeness, possibly more so
9 than the other elements.

10 Although I note that in paragraph 6.1,
11 you know, they also indicate that wood requirements,
12 investment resource availability--

13 Q. Yes.

14 A. --access, transportation and
15 socio-economic issues are also elements of it.

16 MR. GREENWOOD: A. Mr. Swenarchuk, there
17 is some problem in definition here and I am familiar
18 with the prime site program in the northern region, and
19 the way that they got around some of this confusion in
20 terminology was by using two terms.

21 The first was prime land and a piece of
22 prime land was a land which inherently had the
23 capability to produce trees in a more productive way.
24 So that's the productive site in its ability to grow
25 timber and that would be reflected in No. 1 in this

1 list, growth potential.

2 Q. Right.

3 A. And then there are a number of
4 modifying factors on that which in fact encompass 2 to
5 4 -- sorry, 2 to 4 in the top and then all of the
6 non-silvicultural constraints, and when those other
7 factors are considered one arrives at a prime site. So
8 we distinguish between prime land and prime site in
9 that particular region.

10 So in fact if you had a stand that was
11 quite close to the mill, it had primary access right by
12 it but it was lower in productivity, it may in fact
13 still be a prime site.

14 Q. Let me put the way question this way:
15 If you have a stand close to the mill with lower
16 productivity but it was a prime site in the sense that
17 you wanted say maximum regeneration as quickly as
18 possible on that site, I take it you would probably
19 focus on that site as a site for planting as opposed
20 to, for example, natural regeneration?

21 A. Not necessarily. The other
22 conditions that you see listed here under silvicultural
23 potential for the site would have to be taken into
24 account. So that would be one of the factors that you
25 would be weighing, and it may be that you would, in

1 examining the economics involved, take a look at one or
2 two options.

3 (feedback from sound system)

4 THE CHAIRMAN: I think if you shut your
5 machine off, Mr. Greenwood...

6 MR. GREENWOOD: Can you hear me? I will
7 just speak up. Where was I?

8 In determining the treatment that was to
9 be used on that site one would examine a number of
10 different options which are usually contained in the
11 groundrules, and in fact the choice of options may also
12 determine whether it is a prime site or not, the cost
13 of that option.

14 So it doesn't rule out any method of
15 renewal on that site. The method of renewal would
16 become part of the determination as to whether it was a
17 prime site or not.

18 MS. SWENARCHUK: Q. All right. Well, I
19 thought that we had just agreed that, for example, for
20 reasons of proximity to a mill, a site which wasn't as
21 high in productivity as other sites, might be
22 designated for regeneration as a prime site because of
23 proximity to the mill and that would be an important
24 factor?

25 MR. GREENWOOD: A. It would be one of

1 the factors. Another one of the factors would be the
2 most appropriate or the preferred silvicultural method
3 on that site and the costs of that.

4 So, for instance, let's go back to that
5 site again. If it is a lower productivity site there
6 may be two options. So it is not -- it is a lower
7 productivity site but we haven't determined whether it
8 is truly a prime site or not.

9 When examining that site you may have two
10 options. One may be to treat it artificially at "x"
11 cost, another may be to treat it with some other form
12 of modified harvest or naturally at "y" cost. Under
13 the "x" cost, in terms of return on investment, it may
14 not become a prime site; however, under the "y" cost it
15 may. So it becomes one of the economic factors that
16 goes into the consideration.

17 Becomes -- in fact, it is referred to in
18 a round-about-way under No. 3 and 4 under Silvicultural
19 Potential here: Silvicultural know-how and
20 practicality, physical site constraints. Those are all
21 the factors in determining the prescription which would
22 in fact become part of the process in determining
23 whether it is a prime site or not.

24 MR. WAITO: A. Maybe I can just add a
25 comment here. Prime site strategy or prime site

1 management strategy that a company or a Ministry
2 forester may develop, to my way of thinking, would
3 consist of more than just two small paragraphs which is
4 essentially what we have got here.

5 And I think in this document, at the time
6 that the Pineland FMA was being prepared, prime site
7 management -- the term was in Vogue, people were using
8 it, people were --

9 Q. Excuse me, but this agreement dates
10 from last September?

11 A. Yes.

12 Q. And I specifically asked for an
13 agreement which was representative of the current
14 wording being used in FMAs.

15 Now, are you suggesting that this wording
16 is, you know: One, not current and; second, not common
17 in currently negotiating agreements?

18 A. The silvicultural groundrules can
19 vary from FMA to FMA. In Schedule C, the actual legal
20 document which is the first part of the document, I
21 believe should be the same, but the silvicultural
22 groundrules can differ from FMA to FMA and this one in
23 particular -- the ones I have seen have not made any
24 reference to prime site management.

25 Q. Were those earlier agreements to this

1 one?

2 A. Earlier agreements.

3 Q. All right. So are you saying that
4 the statement of prime site management in this FMA is
5 not representative of how the Ministry sees the
6 concept?

7 A. No.

8 Q. To a layperson it sounds quite
9 logical that you put the best money basically where you
10 are going to get the best returns?

11 A. It is representative of how we see
12 prime site management. What I am saying is you may not
13 see a reference to prime site management per se in all
14 FMAs.

15 Q. Fine. But you have already said that
16 it's inherent in management decisions in any event?

17 A. That's right. And the point I was
18 trying to make was I think any prime site management
19 document, if you were to get into the detail of it,
20 would consist of more than just a couple of paragraphs.

21 And I think the FMA document when it was
22 prepared in the northern region, because prime site
23 was -- the term was being used, we tried to put some
24 description to what prime site management is all about.

25 The FMA took the opportunity to recognize

1 that it is a concept that's sort of been given some
2 status, if I can put it that way, by putting a name to
3 it and simply tried to incorporate that into their
4 groundrules, in effect recognizing the concept, and
5 they have tried to very briefly describe what prime
6 site is all about.

7 But I would submit that if the company
8 were to -- or the MNR were to develop a prime site
9 management document for the entire FMA that it would
10 probably consist of a lot more than what we have here.
11 So this is, I think, a fairly superficial description
12 of what prime site management can be all about.

13 And they have as an example, and I think
14 you are quite correct, identified and focused on the
15 more productive sites on their unit and have indicated
16 that those are most likely to be the prime sites and,
17 as a result, you would expect that a fair amount of
18 investment would be required to regenerate those and
19 that those prime sites, whether they be prime because
20 of their productivity or prime for other reasons, would
21 be those parts of the license where they would be
22 directing their investment to particularly their higher
23 cost investment.

24 Q. Okay. Now, when I read those
25 paragraphs, I think it is fairly clear that they are

1 defining areas left to regenerate naturally overall in
2 this FMA as being non-prime sites. In other words,
3 prime sites are going to get -- generally speaking, are
4 going to get artificial regeneration treatment?

5 MR. GREENWOOD: A. And that could --

6 MS. BLASTORAH: Mr. Chairman, I don't
7 know how long Ms. Swenarchuk intends to go around the
8 same thing but I think the witnesses have already --

9 MS. SWENARCHUK: Excuse me, Ms.

10 Blastorah. I am not satisfied with what I have got at
11 this point, I need more information from the witnesses.

12 MS. BLASTORAH: Well, I would just like
13 to state my objection which is that I think the
14 witnesses have already commented on what they think is
15 the interpretation of that paragraph addressing when
16 natural regeneration on non-prime sites will be given
17 natural regeneration.

18 Certainly I don't want to interrupt Ms.
19 Swenarchuk, I just don't know that it is productive to
20 pursue it when they have indicated they don't --

21 THE CHAIRMAN: Well, I think, Ms.

22 Blastorah, in fairness this is an area where the
23 witnesses themselves are indicating what is stated in
24 the document doesn't necessarily encompass what the
25 Ministry considers to be all the factors to be

1 considered in prime site management and they are
2 attempting, voluntarily I might add, to better explain
3 what they think is meant behind this.

4 And if Ms. Swenarchuk is not satisfied or
5 is not clear as to their concept vis-a-vis the
6 document, I think she is fully entitled to pursue it.

7 MS. BLASTORAH: Certainly, Mr. Chairman,
8 I don't mean to interrupt or cut her off, if that is
9 what she is intending to do.

10 I guess the other part of my concern was
11 that they have indicated that this is not necessarily
12 reflective of other FMAs or the Ministry position
13 generally. So the other concern is --

14 THE CHAIRMAN: No, but by the same token
15 Ms. Swenarchuk, as I recall, specifically requested an
16 example of what is currently used. This is what the
17 Ministry put forward.

18 MS. BLASTORAH: Fine.

19 THE CHAIRMAN: And if they are saying now
20 that this isn't really what is a proper example of what
21 is currently used in FMAs, then I think she is entitled
22 to find out why this one is in front of us.

23 MS. BLASTORAH: Certainly, Mr. Chairman.
24 If that's her intention I perhaps rose prematurely.

25 THE CHAIRMAN: Okay.

1 MR. GREENWOOD: I guess all I was saying
2 was that I don't think there is a major problem with
3 the concepts that are here and I think that they do, on
4 the whole, reflect prime site management as a concept,
5 but there will be specifics as to how that is applied
6 including the factors that will differ and will vary.

7 But if you are reading these clauses, the
8 last two paragraphs to mean that where the more --
9 where the increased silvicultural investment will take
10 place will be solely on the highly productive sites and
11 where the reduced silvicultural investment or no
12 silvicultural investment will take place is on the low
13 productivity sites, that is not correct.

14 That is definitely a factor, but in fact
15 it could be that the most productive site is so
16 difficult to treat and so expensive to treat that it no
17 longer becomes a prime site.

18 MS. SWENARCHUK: Right.

19 THE CHAIRMAN: Well, Mr. Greenwood, is
20 this in fact a good representative of what the Ministry
21 considers the wording in an FMA should be with respect
22 to the prime site concept?

23 You know, the Ministry produced this
24 document and you are saying that in the northern region
25 is may be treated slightly differently, and if that's

1 the case should we be looking at this document or some
2 other document?

3 MR. GREENWOOD: Yes, I think that it is
4 representative of the general concept of prime site.

5 THE CHAIRMAN: As expressed here?

6 MR. GREENWOOD: As expressed here. It
7 includes some additional comments, but the concept --
8 the thread of the concept of prime site is accurately
9 expressed in this document.

10 MR. WAITO: If I could just make a
11 comment as well. If my concern was the thought that
12 all areas that are left to regenerate naturally are
13 not -- are considered non-prime sites, and that is not
14 the case, they have indicated here, and I would agree,
15 that in some cases, and they say some softwood working
16 group stands will be cut and allowed to regenerate
17 naturally, that in terms of a site that is considered
18 non-prime considering all of the factors that would go
19 into it, that that is a common understanding, if you
20 will, of how you would -- how you may treat some of
21 those less prime sites in the context of prime site
22 management.

23 So I agree with what's being said in that
24 last paragraph. I just wanted to indicate that all
25 areas that are regenerated naturally are not -- would

1 not necessarily be considered non-prime sites, they may
2 very well be prime sites as well.

3 MS. SWENARCHUK: Q. Fair enough. Now,
4 that we have cleared that up.

5 All right. Changing subjects for a
6 moment. If you continue on page 5 of these
7 groundrules, paragraph 6.3 deals with non-treatable
8 productive forest. I will give you a chance to read
9 it.

10 Now, my question relates to the last line
11 of the first paragraph of that section:

12 "Sites damaged through improper
13 harvesting practices shall not be deemed
14 to be non-treatable."

15 I assume that means that the company will
16 be responsible for treating areas that have been
17 damaged by improper harvest practices; is that correct?

18 MR. GREENWOOD: A. Who is the question
19 directed to?

20 Q. Mr. Waito.

21 MR. WAITO: A. The way I would read that
22 would be that the company still has -- if through
23 improper harvesting practices a site is damaged, they
24 don't have the out of saying that it is non-treatable--

25 Q. Exactly.

1 A. --and therefore we are not
2 responsible for it. So they still, according to this I
3 would think, would still be responsible for renewing
4 that site.

5 Q. Right. Now, are such sites, sites
6 damaged by improper harvesting practices, normally
7 subject to some kind of survey or identification before
8 an FMA is signed or in the negotiating process?

9 A. I don't know. Maybe Peter can answer
10 that.

11 MR. HYNARD: A. Could you repeat that,
12 please?

13 Q. The sentence refers to sites damaged
14 through improper harvesting practices. Now, to my lay
15 mind that suggests that there are such sites, the
16 company is responsible for reforesting them. My
17 question is: How do we know they are there, is there
18 some sort of audit process or inspection process that
19 would identify such sites?

20 A. I think that paragraph of the
21 groundrules deals with that. It says that areas may be
22 classed as non-treatable for those reasons listed and
23 that they will be mutually agreed between the company
24 and the Ministry, that means there is an inspection,
25 and any areas that were offered up as being

1 non-treatable and yet were in that condition because of
2 improper harvesting practices, according to that last
3 sentence in the first paragraph of 6.3, they will not
4 be allowed into that category of non-treatable.

5 Q. That's right, they would have to be
6 treatable.

7 A. That means they are subject to the
8 groundrules.

9 Q. Right. Now, does the Ministry
10 therefore have some sort of record of areas identified
11 as having been damaged through improper harvesting
12 practices?

13 You have agreed that there is an
14 inspection, the paragraph speaks to that particular
15 problem, I would like to know what information the
16 Ministry has.

17 A. Yes, yes. Just give me one moment to
18 finish reading that whole section, if you would,
19 please.

20 Yes. The remainder of 6.3 does identify
21 the manner in which areas will be identified and
22 classified as non-treatable. It identifies the
23 techniques that will be used and it states that the
24 areas which are mutually agreed to be non-treatable by
25 the company and Ministry representative will be labeled

1 as non-treatable. It doesn't describe the accounting
2 procedures, the actual bookkeeping, it just says it
3 will be done in that fashion.

4 Q. I am asking you, Mr. Hynard, as
5 someone who is familiar with the FMA system, if in the
6 process of negotiating an FMA the Ministry therefore
7 accumulates information about sites damaged through
8 improper harvesting practices and how -- what is the
9 nature of that information, how is it kept, does it
10 exist for each FMA?

11 A. I am not aware of any laid out
12 procedure for documenting such a thing. What it says
13 in 6.3 here is that if areas are classified as
14 non-treatable according to all the provisions in 6.3,
15 if they are considered to be non-treatable for that
16 reason, improper harvesting practices, they will not be
17 classified as non-treatable.

18 That's all it says. It doesn't state
19 about a procedure and I am not aware of any provincial
20 procedure for doing it. It is between both parties on
21 that FMA to record them.

22 Q. All right. Does that mean then that
23 the Ministry has records of this kind of site for each
24 FMA?

25 A. Well, I can't speak there from

1 experience because I have never worked in the field on
2 an FMA.

3 Q. Can anyone on the panel answer that
4 question?

5 MR. GREENWOOD: A. If in fact there were
6 such records -- I am not too sure if I got the full
7 line, understanding of the question.

8 Q. All right. Let me make it very
9 clear.

10 A. Okay.

11 Q. The FMA in this case specifically
12 refers to a certain type of remedy to be taken with
13 regard to sites damaged through improper harvesting
14 practices.

15 A. No.

16 MR. HYNARD: A. No, it doesn't mention
17 anything about remedy. It says they will be not
18 classified non-treatable.

19 Q. Meaning that they will be treated,
20 that's the remedy that I am speaking of.

21 A. Meaning they are subject to the
22 groundrules.

23 Q. Okay. Presumably you have to have
24 identified those sites -- or let's say, put it this
25 way, the paragraph speaks to the identification of such

1 sites and I am simply asking what kind of information
2 the Ministry has about sites damaged through improper
3 harvesting practice, whether on this FMA or on any
4 other FMAs?

5 A. The information would exist at the
6 district and the company, there would be a record of
7 areas that have been classified non-treatable and there
8 would be a record of areas that were -- yes, classified
9 non-treatable at the district office.

10 Now, with regard to areas that were
11 requested by the company to be classified non-treatable
12 and yet were rejected because of being in that
13 condition as a result of harvesting practices, I can't
14 say.

15 Q. You are not aware whether the
16 Ministry then has data about these types of sites?

17 A. No, in fact -- I don't. It would be
18 necessary to check for each FMA what records they have
19 on their non-treatable areas.

20 Q. Right.

21 THE CHAIRMAN: Excuse me one moment.

22 MS. SWENARCHUK: Yes.

23 THE CHAIRMAN: Thank you.

24 MR. MARTEL: Could I ask a question, Ms.
25 Swenarchuk.

1 If you get an area that is -- as I
2 understand it, you identify the areas prior to the FMA
3 which might be considered non-treatable. How do you
4 then go about determining after the fact, after the
5 harvest and so on that we have these pockets that are
6 non-treatable, and how do you go back and how do we
7 identify them as -- what do you force a company to
8 do? If after identifying them, what do you force the
9 company to do to rectify it?

10 MR. HYNARD: First of all, the areas are
11 not classified as non-treatable at the time of the
12 signing of the FMA, they are classified after the
13 harvest.

14 MR. MARTEL: Does that mean people go out
15 regularly to check them then? Is there monitoring or
16 how is this done?

17 MR. HYNARD: Yes. I believe the normal
18 procedure would be for the company to request that
19 areas that they had harvested be classified
20 non-treatable and if they were classified non-treatable
21 then the groundrules and all its provisions would not
22 apply.

23 The Ministry would then verify that
24 indeed these areas are non-treatable according to the
25 definition here and, in that case, both parties are

1 agreeing that it is uneconomic or impractical to treat
2 that area, to regenerate it back to a preferred
3 species. It would then be allowed to regenerate to a
4 non-preferred species.

5 MR. MARTEL: So that when you were going
6 over them you could disagree with the company and say
7 that was because of a bad harvest practice and,
8 therefore, you have to treat it?

9 MR. HYNARD: Absolutely. It says in the
10 agreement that the classification of areas as
11 non-treatable will be by mutual agreement. The
12 Ministry must agree that it is in a non-treatable
13 condition.

14 Secondly, it is stated in the agreement,
15 right in the groundrules, the paragraph that we read,
16 that areas that were in a non-treatable condition as a
17 result of harvesting practices would not be so
18 classified.

19 And your final question was what would
20 then happen to such an area?

21 MR. MARTEL: Right.

22 MR. HYNARD: It would be the
23 responsibility of the company to reforest the area in
24 accordance with the groundrules if that event were to
25 occur.

1 MR. MARTEL: Thank you.

2 MS. SWENARCHUK: Mr. Chairman, obviously
3 we have considerable interest in any data that the
4 Ministry has with regard to sites damaged through
5 improper harvesting practices and what happens to those
6 sites, and I would like a little time to consider the
7 actual wording but I would like to put you on notice
8 that I am going to be asking for production of those
9 records.

10 THE CHAIRMAN: Well, we will consider
11 that request at the time you put it to us.

12 MS. SWENARCHUK: Q. Just one question
13 following up from your last comment, Mr. Hynard. As
14 you said, designation of these sites as treatable or
15 non-treatable is by mutual consent?

16 MR. HYNARD: A. I believe that's what it
17 says, yes.

18 Q. I believe so. Yes, paragraph -- page
19 6, paragraph 2:

20 "The areas which are mutually agreed to
21 be non-treatable by the company and
22 Ministry representative will be labeled
23 as non-treatable..." et cetera.

24 A. Yes, that's what it says.

25 Q. What happens in the case in which the

1 Ministry representative considers an area non-treatable
2 and the company representative does not agree or vice
3 versa, the Ministry considers an area treatable and the
4 company considers it non-treatable?

5 A. Yes, that event can arise and I am
6 sure it has. In that case it is up to both parties to
7 revolve that dispute.

8 Of course, the agreement itself up in the
9 front end describes what could occur in the event of
10 unresolved disputes, the arbitration clause. Certainly
11 that's not the kind of dispute that would ever end up
12 in that kind of resolution. It is up to both parties
13 to resolve that and they do.

14 Q. Are you speaking from experience with
15 specific examples when you say that?

16 A. I'm not thinking of a specific
17 example, no, but during the time that I was with the
18 FMA program I did hear of that kind of dispute and I
19 did hear of resolution to disputes.

20 Q. And what was the resolution?

21 A. Oh, I don't have a specific in mind
22 or I would tell you. It was classified one way or the
23 other; either treatable or non-treatable.

24 Q. You don't know how it got to that
25 classification?

1 A. No. No, I don't. That matter is
2 normally resolved in the field with the designated
3 Crown representative for the Ministry and the company's
4 representative and they go out in the field and they
5 look at that area and they decide is it treatable, what
6 methods could be used, what methods are being used
7 elsewhere, is that practical, it is possible. That's
8 the manner in which they come to resolution of that
9 kind of issue.

10 Q. Could you turn to page 8 of the
11 agreement. This question is for - of the groundrules,
12 rather - for Mr. Waito. Paragraph 6.10 at the bottom
13 talks about lesser cost regeneration treatments and it
14 reads:

15 "Where a natural regeneration or a
16 seeding treatment is carried out and
17 fails on a site that would normally be
18 planted, the Minister will agree to pay
19 for the difference between the mutually
20 agreed upon rates...", et cetera.

21 My question is: What is a site that
22 would normally be planted?

23 MR. WAITO: A. Well, it is difficult to
24 say what would normally be planted. You would have to
25 refer to the silvicultural groundrules themselves which

1 would describe what the renewal prescriptions would be
2 for that particular site. It is my understanding that
3 usually the preferred renewal prescription is the first
4 one and if there is --

5 Q. Excuse me, what do you mean by the
6 first one?

7 A. If we could go to the silvicultural
8 groundrules --

9 Q. That begins on page 14.

10 A. We can take jack pine, for example.
11 For the jack pine working group, if we go to the column
12 Silvicultural Prescription you see that there are a
13 number of different prescriptions that could be used to
14 renew that particular site. In the first instance, No.
15 1, is to site prepare and plant, and in the second
16 instance it is to site prepare and seed.

17 The preference to renew that particular
18 site under those conditions would be to plant, and my
19 interpretation of that portion of the groundrules that
20 refers to that would be, if normally that area was --
21 the company preferred to plant it but because of a
22 shortage of planting stock or, for some other reason,
23 they were required to go in and site prepare and seed,
24 which is a lesser cost treatment, and the seeding
25 failed, clause 6.10 would come into play and

1 retreatment of that site would be paid for according to
2 clause 6.10. So that's my understanding.

3 Q. Would I be right in assuming that
4 they are using planting there as the backup because the
5 assumption is it would bring better results than the
6 seeding?

7 A. The assumption -- well, by better
8 results, obviously the company has preferred on richer
9 sites with sandy loam and sandy clay loams and in their
10 opinion planting is the referred prescription because
11 of the site conditions. And in terms of bringing about
12 better results, simply the fact that they will have a
13 better opportunity through planting to establish a
14 stand there, they have chosen planting as the preferred
15 alternative.

16 In my evidence I referred to this
17 particular type of situation where I talked about
18 richer sites -- on richer sites the preferred renewal
19 method is usually planting because of the difficulty in
20 establishing conifer seedlings from seed due to the
21 richness of the site, the competition problems, et
22 cetera.

23 MR. HYNARD: A. Paragraph 6.10 is really
24 a common sense paragraph. On sites which are normally
25 planted, which is a high cost silvicultural treatment,

1 normally planted for all the reasons that Mr. Waito
2 gave in his direct evidence why sites are planted, if
3 the company elected to carry out a lesser cost
4 treatment for whatever reason, because they didn't have
5 the stock, for example, might be a reason and yet they
6 wanted to see the area regenerated, recognizing that
7 the second option is a lesser cost option may be
8 riskier and, recognizing if the treatment on the part
9 of the company is to fail, then the company must
10 reforest at its own expense.

11 Well, common sense, because it is good
12 common sense to take a lesser cost treatment wherever
13 possible and that clause is to encourage--

14 Q. I am not arguing --

15 A. --the companies to do so.

16 Q. I am not arguing with the presence of
17 the clause. I simply wanted to identify what is a site
18 that is usually planted?

19 A. Yes. It would be a site so
20 identified in the Table 1 on page 14 and onward from
21 page 14.

22 MS. SWENARCHUK: I think I am going to
23 need a break, Mr. Chairman.

24 THE CHAIRMAN: Very well. Why don't we
25 take a 20-minute break at this time.

1 Thank you.

2 ---Recess taken at 10:20 a.m.

3 ---On resuming at 10:50 a.m.

4 THE CHAIRMAN: Thank you. Be seated,
5 please.

6 MS. SWENARCHUK: This is vestiges of two
7 weeks ago, Mr. Chairman. I will keep eating cough
8 drops and we will see.

9 Q. Who wants to answer the next question
10 on FMAs?

11 Still on page 9 of the silvicultural
12 groundrules, paragraph 8 has to do with invoicing and
13 my question relates to the second paragraph:

14 "For completed silvicultural projects..."
15 and the following paragraph if you would like to read
16 that over and I will ask Mr. Hynard about that.

17 Mr. Hynard, my question relates to the
18 last line of the second paragraph regarding invoicing.
19 -- sorry, the third paragraph:

20 "Where the Minister disagrees with the
21 information on the map or the area, the
22 Minister and the company will revise the
23 information so it is mutually agreeable."

24 And the previous paragraph indicated
25 that:

1 "Within two weeks of receipt of the
2 information, the Minister will assess the
3 validity of the invoice."

4 MR. HYNARD: A. Yes.

5 Q. I would like you to tell us how the
6 Ministry assesses that validity?

7 A. The validity of that would be
8 assessed in the field.

9 Q. How exactly?

10 A. It would vary on the nature of the
11 project, but let's say for a tree planting project, for
12 example, it would be an inspection which in the mind of
13 the inspector was adequate to determine that the area
14 as outlined on the map submitted with the invoice was
15 accurate.

16 So he would walk the area or walk it to
17 the extent that he felt necessary to satisfy himself
18 that the entire area had been planted or treated,
19 whatever the treatment was.

20 Q. So then are you telling us that every
21 area that is treated on an FMA is then inspected by a
22 Minister personnel; is that right?

23 A. What I am saying is he would do that
24 to the degree necessary to satisfy himself that the
25 area was treated. And, no, I can't say that he would

1 necessarily do that for every single area. He might,
2 he might not; that's his judgment to make as to the
3 degree to which that is necessary to satisfy himself.

4 Q. So assessing the validity of the
5 invoice, are you suggesting could be simply looking at
6 it, relying on his past experience with the company and
7 deciding to accept the invoice without an inspection?

8 A. Well, again, I have never done any of
9 these so I can't reply from personal experience.

10 Q. Does anyone on the panel have
11 experience on how this assessment is done?

12 MR. KENNEDY: A. Yes, I do, Ms.
13 Swenarchuk.

14 Q. All right. Were you involved in
15 doing these assessments yourself, Mr. Kennedy?

16 A. Yes, I have been.

17 Q. And what was your practice for doing
18 the assessments?

19 A. Our practice was to field inspect all
20 projects at some time either during the project being
21 completed or at the conclusion of the project.

22 Q. All projects?

23 A. Yes.

24 Q. And are you aware of whether that's
25 the general practice in the Ministry?

1 A. It is my belief that it is.

2 Q. But you don't have information on
3 that?

4 A. No. As Mr. Hynard said, I do not
5 have knowledge that it is that way.

6 MR. GREENWOOD: A. I hesitated for a
7 minute, Ms. Swenarchuk, because it has been since
8 1984/85 that I was last involved, but that was the
9 practice on the unit that I was Crown representative
10 for at that time.

11 Q. Was to -- you would field inspect
12 every project?

13 A. Correct.

14 Q. Can we turn now to paragraph 9 which
15 is regeneration assessment and perhaps you would like
16 to take the time to read 9.1 and 9.2.

17 Now, as we see from the paragraph the
18 company does the stocking assessments, and my question
19 is: What information is provided to the Ministry with
20 regard to these stocking assessments?

21 MR. HYNARD: A. My understanding, Ms.
22 Swenarchuk, is that on areas which had received the
23 formal regeneration assessment, that that formal
24 regeneration assessment would be submitted to the
25 Ministry. If, on the other hand--

1 Q. Excuse me.

2 A. --areas that were obviously above or
3 below the stocking standards and a visual inspection
4 was conducted, then it would be simply a map of the
5 area.

6 Q. What do you mean when you say a
7 regeneration assessment would be provided? What is in
8 that assessment? What sort of data does the Ministry
9 have?

10 A. Whatever data was collected by the
11 company to determine the stocking levels on that area.
12 Many groundrules and I think most groundrules, if not
13 all, specify the regeneration assessment methodology
14 that will be used.

15 If you give me a moment I will just check
16 these groundrules to see what methodology will be used.
17 No, I don't see anything in here that states precisely
18 the methodology that would be employed. It just says
19 that for areas obviously above or below, a visual
20 inspection may be sufficient. On other areas a more
21 formal method of assessment will be carried out. It
22 doesn't specify.

23 Q. Well, can somebody tell us what data
24 the Ministry receives from an FMA holder and in what
25 form with regard to the results of the stocking

1 assessments?

2 MR. KENNEDY: A. Ms. Swenarchuk, perhaps
3 I can help you out there. The annual reports that are
4 filed annually with the annual work schedule outline
5 the report of stocking assessments that have been
6 carried out in the -- for FMAs and gives a detailed
7 breakdown of the working group, the areas assessed by
8 working group that is, and the stocking levels that
9 exist on that. And this information is contained in
10 the Timber Management Planning Manual on pages 162 and
11 163.

12 Q. Okay. So for each FMA then the
13 Ministry does have information on stocking assessments
14 done on an annual basis?

15 A. Yes.

16 Q. Now --

17 A. At the management unit level for that
18 particular area.

19 MR. HYNARD: A. Yes. And for those
20 areas treated by the company in the fifth year
21 following harvest or treatment.

22 Q. You are talking now about stocking
23 assessments?

24 A. Yes.

25 Q. Would you repeat that, Mr. Hynard?

1 A. Yes, the company information would
2 apply only to those areas that were treated by the
3 company. It would not apply, for example, to areas
4 that were treated by the Ministry during the phase-in
5 period or prior to the signing and it would apply --
6 those assessments would be conducted in the fifth year
7 following harvest or treatment. So it would not apply
8 to areas that were treated the year before or two years
9 before.

10 Q. That's right.

11 A. Right.

12 Q. I want to be clear on that too. You
13 don't have an assessment from the company, as I
14 understand it, until five years after treatment?

15 A. That's right.

16 Q. So does the Ministry then, for
17 example, not have second-year stocking results from FMA
18 holders?

19 A. There is no requirement that the
20 agreement holder provide the results of any other
21 assessment work he performs.

22 Q. Only five-year assessments?

23 A. That's right.

24 Q. All right. Now, if we look at our
25 Interrogatory No. 15 again, given that the Ministry

1 receives that information at least on a five-year
2 basis, I am wondering why it is that we were told that
3 no information -- information of this nature is not
4 readily available for FMA areas and why no data was
5 provided on FMAs at all?

6 A. Well, the reason for that was that --
7 I think the words were that information was not readily
8 available. Your request asked for regeneration results
9 by silvicultural harvest system and regeneration method
10 by working group for a number of districts.

11 The information provided by the company
12 is not broken down in that form. We would have to go
13 back to the agreement holder and ask him to sort on
14 that basis, so it was not readily available as you
15 asked.

16 Q. First of all, we asked for past
17 results of artificial and natural regeneration by
18 silvicultural system, yes. We did not specify --
19 sorry, yes, we did specify by species.

20 All right. If you didn't have it in that
21 detail then, what detail do you get is the question.
22 Do you get any correlation between FMA assessment
23 results and silvicultural system, for example?

24 A. No, we get the results of the
25 regeneration assessments conducted by working group or

1 forest unit, but not by treatment type. You must
2 remember you asked for treatment type by artificial
3 versus natural and by silvicultural harvest system.

4 Q. Okay. Do you get a breakdown then as
5 between artificial and natural regeneration assessment
6 results?

7 A. There is no requirement that they be
8 broken down in that fashion.

9 Q. Okay. So you don't then have a
10 basis, for example, for comparing success rates between
11 artificial and natural regeneration on those areas?

12 A. Well, we -- no, I wouldn't say that
13 necessarily. We were unable to answer your
14 interrogatory in that fashion.

15 Q. Let me place the question more
16 broadly then, because again we are concerned -- I am
17 concerned here with data available regarding FMA
18 success rates.

19 My question then is: Does the Ministry
20 have the data to assess and compare success rates
21 between artificial and natural regeneration in these
22 FMA reports?

23 A. We have that capability by virtue of
24 the fact that we have the records of areas treated by
25 the company according to treatment type and

1 silvicultural harvest system, and when the stocking
2 assessments are performed by the company and later when
3 the free to grow assessments are done we have those
4 records. And it is possible to correlate them, and so
5 we have the capability to do so. However, we do not
6 have that data in the form that would enable us to
7 reply to your interrogatory.

8 Q. Leave the interrogatory aside for a
9 moment. So you are saying then that the data exists
10 within the Ministry to do that kind of comparison
11 between artificial and natural regeneration success
12 rates?

13 A. I believe it would be possible for a
14 district, if it wished to analyse that particular
15 thing, to do so. Mind you, it would be an enormous
16 job. It would depend exactly on what kind of analysis,
17 what kind of treatments, on what kind of site types.
18 You are talking about an enormous task.

19 If it was a matter of particular concern
20 to the Ministry they would be capable of doing so, I
21 believe.

22 Q. Mr. Waito, do you have experience
23 with this area? You were a silvicultural officer at
24 one point.

25 MR. WAITO: A. Well, regional

1 specialist.

2 Q. Right. Have you had occasion to deal
3 with the silvicultural success rates from FMA holders?

4 A. No, I haven't. As a unit forester I
5 had the opportunity of viewing various silvicultural
6 treatments and coming to my own conclusions as to what
7 was successful, what wasn't successful on a
8 site-by-site basis, but I haven't had any experience in
9 analysing the kind of information that you have been
10 speaking about here in my position as a specialist.

11 Q. Is it fair to conclude that the
12 Ministry does not examine the FMA silvicultural results
13 to compare success rates as between natural and
14 artificial regeneration treatments?

15 A. In a formal way it is fair to
16 conclude that. We were not provided with the kind of
17 information that would allow us to do that on a routine
18 and in a formal way.

19 However, I think by the same token, as
20 Peter indicated, it is still possible to make those
21 comparisons, but it would be on a case-by-case and on a
22 site-specific situation.

23 Q. All right. Which brings me to my
24 next question. Is the data provided to the Ministry by
25 the company in these assessment results correlated to

1 site types; that is, does it in any way identify the
2 site types for which given levels of success are
3 reported?

4 A. I think the only description of site
5 type would be the working group, so the answer is no,
6 the information is not provided by site type.

7 MR. HYNARD: A. However the individual
8 assessments are done on a project or area basis and so
9 it would be possible to correlate them.

10 Q. It would be possible but, again, I
11 understand it is not routinely done?

12 A. That's correct.

13 Q. So they are not correlated then by
14 site types or by silvicultural treatment types?

15 A. The summaries that the company
16 provides in its annual report are not, no. The
17 individual assessments are done on a project basis and
18 that would be possible to do.

19 Q. Again, possible but not done?

20 A. I can't say it is never done. It is
21 certainly not routine to do it.

22 Q. It is not part of how you deal with
23 this data that comes in from the company?

24 A. No, that's right.

25 MR. KENNEDY: A. Ms. Swenarchuk, if I

1 might add something there. What isn't being said is
2 that there is an assessment of the success of areas
3 treated versus untreated and that takes place in the
4 form of free to grow surveys.

5 Q. I was just coming to those, yes.

6 A. And that information is reported both
7 annually and at the five-year level.

8 Q. And is it reported with relation to
9 silvicultural treatment?

10 A. No, it is not.

11 Q. And what about with relation to site
12 types?

13 A. No, it is not.

14 Q. All right. If we can look at
15 paragraph 9.2 which has to do with free to grow
16 assessments. If I understand correctly, upon being
17 declared free to grow, a stand is then calculated back
18 into the FRI for maximum annual depletion purposes; is
19 it not?

20 MR. HYNARD: A. Yes, it is. Yes.

21 Q. So from that perspective of course
22 the company certainly has an interest in identifying
23 stands that are free to grow?

24 A. Yes, it does.

25 Q. And could you just specify for us

1 again, Mr. Kennedy, exactly what are the records, the
2 type of records that the Ministry obtains on a free to
3 grow assessment?

4 MR. KENNEDY: A. If I could just have a
5 moment.

6 Q. You are reading from the Timber
7 Management Planning Manual, are you, Mr. Kennedy?

8 A. I was about to start with paragraph
9 9.2 on page 11 of Exhibit 513.

10 Q. All right.

11 A. I will just point out that when a
12 free to grow request is made of the Ministry, which
13 takes place through the annual work schedule, the
14 request is accompanied by a map of the area that is
15 submitted, the forest unit designation is suggested for
16 that area, and a description of the assessment system
17 used by the company, as well as a summary of the
18 results obtained. But further to that, in the Timber
19 Management Planning Manual, in the annual report
20 requirements --

21 Q. What page is that, please?

22 A. And now I am now reading from page
23 161, is a requirement to file annually a record of the
24 areas that had been assessed during the previous year,
25 a recording of the amount of that area that has been

1 approved to go back into the MAD land base, it is
2 declared free to grow. Those areas are reported by
3 working group and by treated or untreated and that is
4 on an annual basis.

5 There is a similar table which is
6 prepared as part of the report of past forest
7 operations, and I direct your attention to page 47 of
8 the Timber Management Planning Manual.

9 I would simply advise you that this is a
10 summary of the five individual annual reports, and I
11 would also point out to you it is the report of past
12 forest operations that is used to update the status of
13 the land base on a management unit prior to the
14 beginning of a new timber management plan, where it is
15 then that areas that have been successfully regenerated
16 are recorded and re-entered into the land, as well as
17 the report of past operations allows for a review of
18 the treatments that have taken place during the
19 previous five years.

20 And through the summary and conclusions
21 there is an opportunity for the forester and the public
22 to review the success of the treatments on the
23 management unit prior to beginning the new plan.

24 Q. So then we now have in the annual
25 reports some assessment of results of the stocking

1 assessments taken in that year?

2 A. Taken in the previous year, yes.

3 Q. Okay.

4 A. And I might add that in part our
5 ability to answer the Question 15 -- although this
6 information is contained in the Timber Management
7 Planning Manual, you will recall it has only been in
8 place since '86.

9 I believe your request in Question 15
10 dealt with the period back in the mid 70s; hence, our
11 inability to supply some of that information on an FMA
12 basis.

13 Q. Are you saying that the Ministry has
14 no data on FMA success rates prior to '86 or collected
15 none prior to '86?

16 A. No, I'm not. I am simply indicating
17 that it is now standard practice for all management
18 units, both Crown, company and FMA holders to supply
19 this information on an annual basis and summarize it as
20 part of the report, past forest operations.

21 Q. Okay. When we look at page -- the
22 chart on page 47, the Timber Management Planning
23 Manual --

24 THE CHAIRMAN: We don't have that manual
25 in front of us, Ms. Swenarchuk.

1 MS. SWENARCHUK: I understand that, Mr.
2 Chairman. I was not anticipating this, however, I
3 think I can deal with the question in any event.

4 Q. Basically you agree with me, Mr.
5 Kennedy, it has two categories of assessment results,
6 those from treated areas and those from untreated
7 areas; is that not correct?

8 MR. KENNEDY: A. That's correct. That
9 is a division on the table.

10 Q. That's right. Now, do the untreated
11 areas -- does that section correspond to areas left for
12 natural regeneration?

13 I will put the question more broadly:
14 What is an untreated area on this chart?

15 MR. HYNARD: A. I believe untreated in
16 that case would refer to the fact that the area had
17 been harvested but had received no regeneration
18 treatment of any kind. So it would refer to the area
19 that was shown in white on Exhibit -- I will find the
20 number.

21 Q. Perhaps we can make this shorter, Mr.
22 Hynard. Are you suggesting then that untreated on this
23 result -- on this chart refers not to areas necessarily
24 left for natural regeneration but areas on which a
25 treatment of some sort, perhaps planned, has not yet

1 been carried out?

2 A. My understanding is that if an area
3 has been left for natural regeneration but had been
4 assisted in some fashion, for example, by strip cutting
5 or scarification for natural, that kind of thing, then
6 that would have been treated.

7 Areas which were harvested without any
8 follow-up treatment would be in the second category.
9 That's my understanding.

10 Q. Yes. Areas harvested without a
11 follow-up treatment, you say, are in the second
12 category?

13 A. Yes.

14 Q. My question is: Is that a question
15 of time, that the treatment has not yet been done for
16 whatever reason, or is it an area on which there isn't
17 going to be a treatment because this prescription is
18 natural regeneration unassisted?

19 A. I guess --

20 Q. What I want to know is whether this
21 chart delineates results as between artificial
22 regeneration efforts and natural regeneration efforts
23 or not?

24 A. Could you give me just a moment,
25 please.

1 MS. BLASTORAH: Mr. Chairman, I believe
2 the exhibit Mr. Hynard referred to earlier was 534A.

3 MR. HYNARD: Our understanding is that it
4 can't be used specifically to delineate between
5 artificial and natural. It is referring to treated and
6 untreated. If it had received a treatment of some kind
7 to assist it it would fall into the first category. So
8 some natural regeneration would be in that first
9 category.

10 MS. SWENARCHUK: Q. But it doesn't
11 constitute a breakdown between the two approaches?

12 MR. HYNARD: A. No.

13 Q. Just to be clear on this again, Mr.
14 Kennedy. With respect to the free to grow assessments,
15 the chart that controls that is at page 163; is that
16 right?

17 MR. KENNEDY: A. In the Timber
18 Management Planning Manual on page 161 you will find an
19 outline of Table 67.1 and the title of that table is
20 Annual Report of Free to Grow Assessment and Success,
21 and the corresponding table that is used in the fifth
22 year report of past forest operations is found on page
23 47 which is titled Table 4.7, Report of Free to Grow
24 Assessment and Success.

25 Q. Thank you. Could I direct your

1 attention now to page 13 of the groundrules, paragraph
2 15 which has to do with the integration of other
3 resource values in timber management.

4 Mr. Greenwood or Mr. Kennedy or whoever
5 else has experience with this. As I understand it, the
6 third paragraph of that section specifies that:

7 "Where required, additional cost for
8 specified harvest and regeneration
9 activities agreed to in the annual work
10 schedule will be paid by the Minister."

11 Now, is this an indication that on FMAs
12 where particular prescriptions exist for protection of
13 an area of concern that payments to the company may be
14 made for carrying out those prescriptions other than --
15 these prescriptions being other than, as the Ministry
16 says, normal forest operation?

17 MR. GREENWOOD: A. I am sorry, I am not
18 familiar with this particular clause.

19 Q. Mr. Kennedy?

20 Mr. Greenwood, are you suggesting then
21 that this clause is not common in other FMAs?

22 A. No, I am suggesting my experience
23 with FMAs is five years old. I am just not familiar
24 with this clause or how it has been applied.

25 Q. All right.

1 MR. KENNEDY: A. I can advise you that
2 the FMAs that I have worked with did not have a clause
3 that was similar to this. However, I believe it is
4 just recording the fact that the activities undertaken
5 by the company would be reimbursed according to the
6 rates set out in Schedule D to that agreement.

7 Q. I guess my interest here is whether
8 this is a process by which FMA holders can receive
9 compensation for amending the practices in an area of
10 concern to some practice other than normal forest
11 operations, and when I read those two paragraphs
12 together it appears to me that that is the approach.

13 I haven't heard about that before and I
14 am interested in, you know, for what practices they can
15 be compensated.

16 A. No, that is not the approach. The
17 paragraphs are simply outlining the fact that the
18 treatments, if carried out, would be reimbursed again
19 according to the agreed to rates that are set out in
20 Schedule D.

21 For instance, if a form of planting is
22 required within the area of concern, then the rates
23 would be paid according to the schedule.

24 Q. What would be referred to as
25 specified harvest activities then in an area of

1 concern? I don't see any reference to compensation for
2 specified harvest practices in Schedule D.

3 A. I agree that you do not see a direct
4 reference to that in Schedule D. I believe in this
5 particular agreement the phrase harvest activities is
6 being used in a broader context than we use here in the
7 hearing room, and there is an associated access
8 consideration in the phrase harvest activities that are
9 used in this FMA, and I would suggest in others.

10 And there is a clause within the
11 agreement that deals with providing a form of access to
12 facilitate regeneration treatments and reimbursing the
13 company for those costs of that access that would
14 perhaps not normally occur to facilitate the renewal of
15 the area. An example of that may be to --

16 Q. Mr. Kennedy, the sentence -- the
17 paragraph goes on to refer again to harvest practices:

18 "The company will have the option of not
19 harvesting allocated stands within an
20 area of concern if agreement on cut
21 disposition cannot be reached."

22 It appears to be dealing with the
23 question of harvest.

24 MS. SWENARCHUK: If no one on the panel
25 has experience with this, what I would ask, Mr.

1 Chairman, is that the Ministry inform us - I am asking
2 for an undertaking - of whether there is a practice or
3 whether there are examples of compensating companies
4 for practices other than normal harvest practices in
5 areas of concern.

6 MS. CRONK: I'm sorry, Mr. Chairman. I
7 don't rise to object. Why doesn't Ms. Swenarchuk put
8 that question to the panel, that hasn't been put to the
9 panel yet. Let's find out if they know.

10 THE CHAIRMAN: I think that's a good
11 suggestion. Well, the presumption is they don't know--

12 MS. SWENARCHUK: All right.

13 THE CHAIRMAN: --but perhaps they do.

14 MS. SWENARCHUK: I thought they had
15 answered that question and that they didn't know.

16 Q. However, if that is not the case, Mr.
17 Hynard, you seem to be wanting to jump in again.

18 MR. HYNARD: A. No. I just wanted to
19 have that question clear in my mind, since it appears
20 you are going to put it to us again.

21 Q. All right. Is there a practice or
22 are there examples of companies being compensated for
23 harvest practices in areas of concern that differ from
24 what -- the term that has been used in this hearing
25 which is normal harvest practice?

1 A. No, I am not able to answer that
2 question.

3 THE CHAIRMAN: Can anyone else on the
4 panel answer that?

5 MR. KENNEDY: I can advise you that there
6 is no such payments.

7 MS. SWENARCHUK: There is no such
8 payment.

9 Q. And as far as you are concerned, this
10 paragraph refers to road construction?

11 MR. KENNEDY: A. I believe it is
12 referring to the use of access to facilitate
13 regeneration within an area of concern, yes.

14 Q. Although the phrasing refers to
15 specified harvest and regeneration activities?

16 A. Yes.

17 Q. Can the panel members tell me if this
18 paragraph is representative of other FMAs? Do other
19 FMAs include this paragraph as well?

20 MR. HYNARD: A. The wording of this one
21 is different than I am familiar with, I think for the
22 reason that it is made to correspond to the new timber
23 management planning process and I am familiar with the
24 old process. But there are similar paragraphs in the
25 groundrules of other agreements.

1 Q. Similar in what respect?

2 A. Similar in that the first sentence
3 and the second sentence in the third paragraph of
4 Section 15 are similar. They speak to additional
5 costs, they speak to harvest and regeneration, they
6 speak to specifying it in an annual plan and the
7 company having the option of not harvesting if
8 agreement is not reached on that disposition. Those
9 elements I have seen in other agreements.

10 Q. And is it your information as well
11 that in fact no payments for such additional costs are
12 made?

13 A. Well, your question was: Can we
14 provide a practice, a statement of practice or examples
15 of that having been done and I am unable to do that. I
16 am not aware of specific examples. I have not seen a
17 stated practice for the implementation of those words.

18 THE CHAIRMAN: No, but are we to take
19 that Mr. Kennedy's last answer where he said that he
20 can answer that, no payments have been made, refers to
21 the fact that no payments have been made for other than
22 normal harvesting practices and that you, Mr. Kennedy,
23 believe that any payments that might have been made
24 would relate only to additional cost relative to roads
25 for assisting in regeneration?

1 Is that the import of your answer?

2 MR. KENNEDY: Additional costs that are
3 associated with regeneration, yes. I believe Ms.
4 Swenarchuk's question was compensation for altering
5 harvest practices.

6 THE CHAIRMAN: And your answer to that
7 was no?

8 MR. KENNEDY: Was no. If I might provide
9 an example perhaps it would clear up...

10 MS. SWENARCHUK: Q. Does it have to do
11 with harvest practice?

12 MR. KENNEDY: A. No. I was thinking of
13 one that would do with regeneration practice. Perhaps
14 within a particular area of concern, if a selection
15 harvesting had been permitted within the area, it would
16 be difficult to conduct what I would call normal site
17 preparation treatments.

18 If it was desired to carry out a planting
19 operation, it would be reasonable for a forester to
20 prescribe a hand-scalping treatment, a form of manual
21 site preparation at the time of the planting. On
22 operations such as that there would be a significant
23 increase in cost that would not be reflected in the
24 cost of the treatments that are outlined in Schedule D.

25 And as part of developing the

1 prescription for the area of concern, there would be an
2 agreement that it would be an acceptable thing to do,
3 to carry out that treatment, for the company to incur
4 higher costs and for the Crown to reimburse the company
5 for those additional costs that would not be shown in
6 the schedule.

7 Q. Fine. Mr. Kennedy, we have already
8 heard testimony that no FMA holders receive payments
9 for using modified cutting for regeneration purposes,
10 and I just want to add to that.

11 I take it then that no FMA holders are
12 receiving payment either for using modified cutting or
13 different^o harvest practices in areas of concern, it
14 simply completes the picture?

15 A. Your understanding is correct.

16 MS. SWENARCHUK: Now, Mr. Chairman, next
17 starting on page 14, I believe the next six pages
18 consist of silvicultural prescriptions and regeneration
19 standards, and particularly page 14 and 15 and 16 have
20 to do with -- largely with conifer species and 17 and
21 18 with hardwood species, and then 19 all working
22 groups on non-treatable areas.

23 Q. Mr. Waito, would you like to take a
24 moment to look at the three pages that have to do with
25 conifers, if that would be fair.

1 MR. WAITO: A. Okay.

2 Q. Okay. So would you agree with me
3 then that clearcutting is an option on all site types
4 except for jack pine, non-prime sites relying on
5 natural regeneration for poplar and birch - that's the
6 third column down on the first page - otherwise clear
7 cutting is an option on all site types?

8 A. Yes, you are correct.

9 MR. FREIDIN: I am sorry, where are we
10 referring? I can't follow.

11 MS. SWENARCHUK: We are looking at page
12 14, 15 and 16, the silvicultural groundrules.

13 MR. FREIDIN: The specific portion that
14 you were just referring to?

15 MS. SWENARCHUK: I was referring to those
16 three pages.

17 MR. FREIDIN: All right.

18 MS. SWENARCHUK: Q. And the stocking
19 standards for the various species are in the two right-
20 hand columns?

21 MR. WAITO: A. Yes.

22 Q. And would you agree with me that the
23 objectives stated for stocking is 70 per cent for both
24 artificial and natural regeneration, that's the
25 objective, and the minimum for both natural and

1 artificial is 40 per cent except for poplar and birch,
2 and 50 per cent where there would be a conifer mix of
3 jack pine and black spruce?

4 A. Yes, I believe you have described it
5 fairly accurately.

6 Q. Now, in Panel 4 the Board heard
7 evidence about the Forest Production Policy of Ontario,
8 and the Panel 4 witness statement is Exhibit 135. And
9 at page 65 of that witness statement we have some of
10 the Forest Production Policy assumptions.

11 The first assumption listed is that we
12 will receive a yield of 10 cunits per acre from natural
13 regeneration and 20 cunits per acre from treated areas.

14 A. Yes, I see that.

15 Q. So you will agree then that the
16 Forest Production Policy assumes better results and
17 better yields on treated areas, or I will use the
18 phrase here, artificially regenerated areas?

19 A. The assumptions that were made back
20 in 1972, when they first developed the Forest
21 Production Policy, the first assumption is, as you have
22 indicated, yields of 10 cunits per acre from natural
23 regen and 20 cunits per acre from treated areas.

24 Q. And I believe Mr. Carey testified in
25 Panel 4 that - and you can verify this from your own

1 experience - the Forest Production Policy devised in
2 1972 is still used in the sense that the targets there
3 are still the targets used by the Ministry in
4 establishing timber targets for each district, for
5 example?

6 A. The two targets I believe we are
7 speaking of here are: One, the volume target, the
8 old -- the FPP is still in place and the volume target
9 for the province was 9.1-million cunits by the year
10 2020. The other targets are of course hectares renewed
11 or treated which are included in the implementation
12 schedule.

13 Q. But is not the underlying assumption
14 that artificial regenerated sites will give better
15 yields still a practising assumption?

16 A. I believe it -- according to this, if
17 we are still following the old FPP, I think the
18 assumption is still valid generally speaking.

19 Q. Right. So that being the case, I am
20 surprised to see that in the silvicultural groundrules
21 here we have the same expectation, the same objectives
22 and minima for both artificial and natural
23 regeneration. Can you explain why that is?

24 A. Well, in the silvicultural
25 groundrules we are talking about stocking standards

1 which are quite different from yield figures which
2 are -- the assumptions that were included in the Forest
3 Production Policy.

4 Stocking or the number of trees that
5 would grow on a site obviously will have an impact on
6 future yield, but just because the numbers are the same
7 for artificial and natural does not mean to say that
8 the expected yields will be the same.

9 Q. All right. So are you saying then
10 that you could have the same stocking results and yet
11 have the stand producing twice the yield?

12 A. Yes, you could.

13 Q. And are you saying that you can
14 assume that even with the same stocking results the
15 artificially regenerated stand will produce twice the
16 yield?

17 A. I don't think you can assume. For
18 instance, a naturally regenerated poplar stand at
19 maturity -- I have had experience with poplar stands
20 producing 60, 70, 80 cunits per acre and those would be
21 I think very high production levels if you are looking
22 at conifer stands on the same site. So your yield at
23 maturity is very site-specific, it is very
24 species-specific.

25 I think the Forest Production policy when

1 it was first developed many years ago took a -- they
2 made some average yield assumptions and I don't know on
3 what basis the assumptions were made, what growth and
4 yield information. I have no knowledge of that. They
5 simply made some average yield assumptions and
6 developed a policy from there.

7 Q. Well, would it be fair in your
8 professional experience to conclude that where stocking
9 assessments for natural and artificial stands are
10 similar that it is unlikely that the artificial stand
11 is in fact going to have twice the yield?

12 A. I wouldn't say -- it's unlikely,
13 again, it is very site-specific. You may have a
14 lowland --

15 Q. Let's talk generally across the
16 province, Mr. Waito.

17 MR. FREIDIN: Maybe just let him answer
18 the question.

19 MR. WAITO: Generally twice. I really
20 couldn't comment on whether...

21 MR. GREENWOOD: Ms. Swenarchuk, Mr. Carey
22 in his evidence on page 25 on Panel 4 did in fact speak
23 to your line of questioning.

24 There is a paragraph there, two of them
25 actually, 17 and 18, where he speaks directly to the

1 assumption that you are referring to, the 10 and the 20
2 cunits. And the comment was that:

3 "The second major assumption..."

4 This is referring to those two levels:

5 "...upon which the Forest Production
6 Policy was based was that sites will
7 regenerate without regeneration treatment
8 would yield an average 10 cunits per
9 acre, and on sites which received a
10 regeneration treatment would yield an
11 average 20."

12 Which you have stated.

13 He then goes on to say that these average
14 yield assumptions were crude at best because they did
15 not take into account what Mr. Waito has just been
16 saying. Consideration for differences in site
17 conditions or species, nor do they consider the effects
18 of differing levels of silvicultural effort.

19 Within your natural here, there is -- on
20 page 14 of the groundrules there is reference to site
21 preparation. So there is a level of silvicultural
22 effort here. It is a lower effort, for instance, than
23 site preparation in planting.

24 So I think what Mr. Carey was saying was
25 that there is variability in the silvicultural effort

1 as well as those other things such as site, and you
2 can't simply -- it is an assumption that would need to
3 be looked at, you can't simply say 10 and 20.

4 MS. SWENARCHUK: Q. Yes. I am sure
5 that's true, Mr. Greenwood. If we move on from that
6 assumption, isn't it also true that when we were faced
7 with stocking standards that are essentially the same
8 for artificial and natural regeneration, we are
9 unlikely to be producing stands that have -- that
10 accord with that original assumption; we are unlikely
11 to be producing stands in which the artificially
12 regenerated stands have twice the volume or the yield
13 of the natural producing stands? *

14 MR. GREENWOOD: A. No, I don't think I
15 would say unlikely. I would say that depending on the
16 site, the species and the level of silvicultural effort
17 you may or you may not, it depends on those factors.

18 If one put a significant silvicultural
19 effort into a site, if the condition of that site was
20 suitable for that effort, if the species that was put
21 on that site was adapted to that site, one may get
22 twice as much than if that site was left for natural,
23 but it would depend on those factors.

24 I think that was the clarification that
25 was -- that we were attempting to make in Panel 4, that

1 that is something that would have to be revisited. It
2 was a crude estimate.

3 Q. Right, it was a crude estimate.

4 A. But I don't think it falls outside
5 the realm of possibility given all those other factors
6 that one would take into account.

7 Q. Okay. So it is your evidence then
8 that stocking standards - this is a hypothetical - a
9 stocking standard -- a regeneration effort of a
10 particular species on a particular site, are you saying
11 then that you could expect that even if you had the
12 same stocking standard on that resulting stand produced
13 through artificial regeneration you would have twice
14 the yield of one produced naturally?

15 THE CHAIRMAN: No. Ms. Svenarchuk,
16 without going around in a circle again, I think what
17 the witness has stated a couple of times is basically
18 it really depends on a bunch of other factors.

19 It is not to say that they won't have
20 twice the amount, but that's dependent on specie,
21 specific site, and specific level of effort. It is not
22 to say it will, it again depends on those basically
23 three factors and perhaps some other ones.

24 So you really can't tell what the level
25 will be, whether it will be twice as much as

1 regeneration until you have considered individually
2 those factors.

3 Is that basically your evidence, Mr.
4 Greenwood?

5 MR. GREENWOOD: That was my evidence,
6 yes.

7 MS. SWENARCHUK: All right.

8 Q. So that when you look at the stocking
9 standards in this FMA, am I correct in assuming that
10 you don't expect necessarily that at the end of the day
11 the artificially regenerated stands will produce twice
12 the yield of the naturally regenerated stands; they may
13 or they may not?

14 MR. WAITO: A. I think that's fair. I
15 think the important difference between artificial and
16 natural is not so much we get all hung up on volume,
17 but on certain site types under certain conditions it
18 has been my experience that the only way you are going
19 to get conifer there, irregardless of what the volume
20 is, is by practising artificial regeneration
21 techniques.

22 And I think that kind of thinking is
23 behind the silvicultural groundrules much more so than
24 the feeling that because we are practising artificial
25 regeneration on a particular site we are going to get

1 10 or 20 or 100 per cent, whatever the number might be,
2 greater yield.

3 I think the groundrules reflect the sites
4 that the forester has to deal with, they reflect the
5 proposed working group and the prescription and the
6 prescription then embodies the concept of degree of
7 risk, risk of failure to achieve the objectives.

8 And if you take the jack pine, the first
9 one where the -- in the first row where the first
10 preference is to site prepare and plant, on those
11 particular sites they are described as richer sites
12 with sandy loams and sandy clay loams, the most assured
13 method of getting success -- of meeting your minimal
14 stocking standards here is through site preparing and
15 planting.

16 The second choice is site preparing and
17 seeding because that's the only other choice for jack
18 pine, you either plant it or you seed it. It is a
19 higher risk option because of the site type that they
20 are dealing with here, and the business of whether
21 planting will produce greater yield over seeding is
22 really not so much of a concern.

23 The initial concern is with getting the
24 conifer stand established in the first place and that's
25 what is embodied in the silvicultural groundrules. I

1 don't know if that helps.

2 THE CHAIRMAN: So are you indicating, Mr.
3 Waito, that really when you are looking at the
4 regeneration efforts in terms of artificial and natural
5 it is specie driven to the extent as to what the
6 objective is?

7 If you want a particular specie on that
8 site, taking into account the characteristics of that
9 site, that will determine to a large extent what type
10 of regeneration you are going to follow and what effort
11 or level of regeneration you are going to have to make
12 in respect of meeting your objectives which may be to
13 put jack pine on that particular site or some other
14 specie?

15 MR. WAITO: That's correct. And I would
16 also like to add one more factor - and it's not really
17 spelled out in the silvicultural groundrules - but it
18 is the probability of being successful and the site
19 conditions which you have to deal with are going to
20 have a major impact on your probability of success and
21 we do have some control over increasing the probability
22 of success by changing the renewal prescription.

23 MS. SWENARCHUK: Mr. Chairman, I would
24 just like to point out that there is a site-specific
25 element to viewing regeneration and then there is the

1 province-wide perspective which has to do with, amongst
2 other things, meeting the purpose of the undertaking as
3 expressed by the Ministry --

4 MS. CRONK: I'm sorry, Mr. Chairman. Is
5 my friend now giving evidence? Obviously I have no
6 objection being here with the rest of the world for as
7 long as it takes for the questions, but I do object to
8 counsel giving evidence to the Board.

9 MS. SWENARCHUK: No, I am not giving
10 evidence. I am not giving evidence, Ms. Cronk.

11 MS. CRONK: I object to the exchange
12 then, Mr. Chairman, subject to the ruling.

13 THE CHAIRMAN: Well, I think Ms.
14 Swenarchuk, if you are going to indicate what, in your
15 view, the undertaking has to accomplish, we should
16 either be leaving that to argument at the end of the
17 day or in the form of specific questions to the
18 witnesses.

19 MS. SWENARCHUK: Mr. Chairman, the
20 purpose of the undertaking is expressed in the EA
21 document.

22 THE CHAIRMAN: Yes.

23 MS. SWENARCHUK: I am merely
24 attempting --

25 THE CHAIRMAN: But there is

1 interpretation to be placed on what that means, which I
2 think ultimately would be for the Board and can be
3 addressed in argument by the parties.

4 MS. SWENARCHUK: I was merely attempting
5 to be helpful in identifying the reason that I am
6 looking at the overall yield question, as well as the
7 individual site regeneration question and it is that
8 relationship that I am talking about.

9 MR. FREIDIN: Mr. Chairman, if she is
10 concerned about volume she can ask questions about
11 volume, but I don't think she has to get into the
12 interpretation of the...

13 THE CHAIRMAN: Okay. Why don't we move
14 to a specific question and then we will deal with a
15 further question if there is an objection.

16 MS. SWENARCHUK: I didn't have any more
17 questions in that area, Mr. Chairman.

18 THE CHAIRMAN: Very well.

19 MS. SWENARCHUK: Q. Mr. Waito, when we
20 look at the silvicultural specification, page 14, for
21 jack pine for example, the first site description is
22 all site classes, richer sites with sandy loam and
23 sandy clay loam, and the first preferred silvicultural
24 prescription - I believe you said the first one is
25 usually the preferred - is--

1 MR. WAITO: Yes.

2 Q. --to site prepare and plant, and the
3 objective then is 70 per cent jack pine and the minimum
4 is 40 -- or 50 per cent mixed conifer?

5 MR. WAITO: A. That's right.

6 Q. All right. In fact, as we noticed
7 earlier, that objective applies to all -- virtually all
8 the site types and species types and my question is:
9 If this is a rich site and we are utilizing planting as
10 a technique which is, as we know, the most expensive
11 technique--

12 A. That's right.

13 Q. --why aren't we entitled to assume
14 that greater success will occur on such a site with
15 such planting than on a poorer site with a less
16 intensive management technique?

17 A. That is a fair question, and in this
18 particular FMA I might have the same question myself.

19 I have reviewed a considerable number of
20 groundrules for different FMAs and Crown units and in
21 looking in the Panel 4 witness statement there are
22 regional free to grow benchmark standards where -- in
23 fact, generally you find where planting is prescribed
24 the minimum and often the objective standard are
25 higher, usually 10 to 20 per cent higher, it could be

1 more than that, set for natural regeneration.

2 In this particular agreement the authors
3 chose to run with the same minimum. I don't know why
4 they chose to do that, but certainly there is
5 considerable evidence around that foresters recognize
6 that, because of the extra effort that goes into
7 planting they have set a higher minimum standard.

8 MR. HYNARD: A. The purpose of those
9 stocking standards is threefold: First of all, to set
10 a standard of the amount of stocking that's necessary
11 to grow another stand of that working group and whether
12 it is by natural regeneration or artificial, 40 per
13 cent stocking will grow another stand of that working
14 group; secondly, to grow another commercial crop of
15 timber, if 40 per cent is the minimum that was set as
16 the amount of stocking necessary to grow another
17 commercial crop of jack pine; and, thirdly, here it
18 sets the company's retreatment obligations at its own
19 expense.

20 If we were to raise that minimum stocking
21 standard to 50 per cent for planting, for example, and
22 an assessment were to show 48 per cent - and we heard
23 in Mr. Waito's evidence that 48 per cent stocking is
24 good results - then to require that company to rip it
25 all out of the ground at their own expense and retreat

1 is -- well, it would be ridiculous.

2 That's why 40 per cent has been
3 established because -- that's my inference of why 40
4 per cent has been established as the minimum.

5 THE CHAIRMAN: That doesn't prevent a
6 much higher yield?

7 MR. HYNARD: That's right, and it doesn't
8 prevent a much higher objective. You might ask them
9 why is the objective the same for natural and
10 artificial--

11 MS. SWENARCHUK: I asked that.

12 MR. HYNARD: --given good sites and poor
13 and that 70 per cent stocking is excellent stocking
14 resulting from planting on a very rich site and it will
15 give you a very high yield and a very high reward on
16 the amount of effort you made.

17 With respect to that last category,
18 poor -- sorry, the middle category, all site classes
19 but poorer sites with sand and sandy loam that are
20 being site prepared for natural regeneration, 70 per
21 cent stocking on a poor site is very reasonable to get.
22 In fact, the poorer the site, the more likely you are
23 to get higher stocking levels.

24 And I think all of those reasons and all
25 of those complexities answer your question. It is not

1 as simple as, if you spend more money shouldn't you get
2 higher stocking. No, not necessarily.

3 MS. SWENARCHUK: Q. To go back to your
4 suggestion that the minimum standard is 50 per cent and
5 stocking is at 48 per cent then the company should not
6 have to rip it all out and retreat, that of course is
7 going to be an element no matter what the standard is;
8 isn't it?

9 If the standard is 40 per cent and the
10 stocking results come in at 38 you are going to have
11 the same situation?

12 MR. HYNARD: A. Yes. I have been faced
13 with that very question myself.

14 THE CHAIRMAN: But if you set the minimum
15 at a certain level it is unlikely, with some kind of
16 regeneration effort, particularly artificial, that you
17 would fall below the minimum; is that correct?

18 MR. HYNARD: Well, I think you ought to
19 set it at where you think you really want to draw the
20 line and certainly I would not be drawing the line at
21 50 per cent stocking.

22 In fact, there is evidence already in
23 white pine on my unit, I set it at 30 per cent.

24 MS. SWENARCHUK: Q. So then I take it
25 the evidence of the panel is that -- or just following

1 from what you said, Mr. Hynard, we should not expect
2 that maximum investment, which will usually mean
3 planting, can reasonably lead -- be expected to lead to
4 better stocking results?

5 MR. HYNARD: A. Yes, I think that's
6 fair. I think that it doesn't necessarily lead to
7 higher stocking results.

8 And you will recall in the results that
9 Mr. Waito presented from Hearst it showed very, very
10 high stocking levels of black spruce natural
11 regeneration and those were on lowland sites of
12 mediocre productivity; very high stocking standards,
13 much higher than you could obtain by planting trees on
14 a rich and difficult site.

15 So that's right, there is not necessarily
16 a direct correlation at all. That doesn't mean that
17 the planting will not be rewarded by higher yields.

18 MR. GREENWOOD: A. There is a perfect
19 example of that right here with your third category
20 where it is jack pine being cut with a partial cut. So
21 the implication is that there is still something
22 remaining, and knowledge of this area would suggest
23 that is poplar and birch in this particular area within
24 the area of the undertaking and poplar and birch, of
25 course, naturally regenerate to very high stocking

1 levels.

2 So in that scenario it falls exactly from
3 what Mr. Hynard is saying. That is not only reflected
4 in the objective but in the minimum, where the minimum
5 has now increased to 70 per cent. So in a case like
6 this, artificial renewal doesn't come in -- is not a
7 factor in that the natural renewal, given that species,
8 is so high -- to such a high stocking level.

9 Q. I am more concerned with conifers,
10 Mr. Greenwood. Can you tell us whether in establishing
11 these groundrules the stocking of the previous
12 stands -- of the undisturbed stands is taken into
13 account?

14 MR. WAITO: A. I think -- well, I would
15 have to say no. The reason I say no is we wouldn't
16 know what the stocking of the previous stand was when
17 it was a young juvenile stand.

18 Stocking here -- and I think there has
19 been some evidence given both in Panel 4 and, to some
20 extent, by myself in trying to describe what is meant
21 by stocking. Stocking in a young stand here is
22 measured differently and means something different than
23 stocking information that you would have for an
24 original stand or a mature stand.

25 So you use the same term, but you are

1 talking apples and oranges, so you couldn't really look
2 at, for instance, an FRI description where it might
3 have a stocking of .8 and compare that stocking figure
4 to a stocking standard that you are establishing for a
5 young stand as we have here. So it is not possible to
6 directly compare. So the answer would be no, they
7 wouldn't.

8 Q. Well, are the prescriptions set with
9 any thought or reference to the yield of the previous
10 stand? In other words, when these prescriptions are
11 set is it within with the expectation that these
12 standards in the long term over the growth of the
13 forest will produce a forest of comparable yield to the
14 forest that was there before?

15 A. I think that's the intention, or
16 possibly higher. A lot of these stands when they
17 originate naturally probably -- well, I know for a
18 fact, I have seen one, have very high stocking and you
19 may have 100 per cent stocking with 30- or 40-, 50,000
20 stems per hectare.

21 It takes a long period of time before
22 that stand will self-thin itself, so at maturity you
23 may only be harvesting 3- or 400 stems per acre or 7-
24 or 800 per hectare.

25 The objective here when planting -- for

1 instance, 1,730 is what their prescription is per
2 hectare. The objective there is to control the spacing
3 of the stand so that you capture the productivity of
4 that site and place the growth potential of that site
5 on to what hopefully will be close to the number of
6 stems that the stand can support at maturity.

7 So by doing that it is possible to reduce
8 the rotation and it is possible to produce a higher
9 yield simply because the growth potential of the site
10 is not going into a large number of stems which
11 eventually die and fall out of the picture.

12 Q. Does the Ministry have any studies of
13 the yields being obtained from regenerated stands?

14 You still use Plonski's yield tables for
15 projections; do you not, and those are tables based
16 only on undisturbed stands?

17 A. That's correct. I am aware of an
18 initiative that has been started recently to try and
19 pull together growth and yield information for managed
20 stands in Ontario. The problem is we have very little
21 long-term growth and yield information for managed
22 stands.

23 In Thunder Bay, for example, there is a
24 spacing trial that was established in the mid-1950s of
25 the number of species and we are able to gather some

1 growth and yield information, but we just don't have a
2 lot of growth and yield information for "managed stands
3 in Ontario" on which to base yield curves that could be
4 used in developing volume predictions based on the
5 silvicultural prescriptions that we have here.

6 MR. HYNARD: A. I guess there is one
7 exception to that and that is red pine. There are
8 growth and yield tables for managed red pine stands for
9 the simple reason that red pine plantations have been
10 established in southern Ontario long enough, 70 years
11 or more, to establish -- to determine what that yield
12 will be.

13 Q. Okay. One last question on the
14 stocking standards, and that is in the spruce working
15 group we see an option here for block or strip cut.
16 That's the second part of the column -- on the chart on
17 page 14, spruce, all site classes, and one of the
18 options is block or strip cut.

19 And, again, the stocking standard is 70
20 per cent and 40 per cent minimum, the same as for the
21 more expensive options in other areas.

22 I believe there has been evidence before
23 the Board in previous panels and, again in the response
24 to our Interrogatory No. 28(d), and I will read just
25 read it rather than referring to it:

1 "FMA holders at the present time are not
2 compensated for any additional costs
3 incurred for implementing modified
4 cutting."

5 Now, if you can project similar stocking
6 success rates for modified cutting as from the more
7 expensive options, can you indicate why so little of it
8 is done, 3 to 5 per cent only?

9 MR. HYNARD: A. Yes, I can, and I gave
10 those reasons in my direct evidence and that is, that
11 the type of natural regeneration systems are limited
12 according to suitable site and stand conditions. They
13 cannot be applied everywhere, they cannot be used to
14 replace artificial methods on other site types.

15 They give comparable results, they can
16 give very high stocking results on certain site types,
17 but if you take that same cutting method and transplant
18 it elsewhere to an entirely different site type you
19 won't get those results, you will get a very high
20 problem of failure.

21 And for all the reasons that Mr. Waito
22 gave in his direct evidence on artificial, those
23 difficult competition-prone sites require planting.

24 Q. And when we talk about modified
25 cutting for black spruce, we are talking about boreal

1 forestry; are we not?

2 A. Yes, we are.

3 Q. And, once again, you are not
4 experienced in boreal forestry; is not right?

5 A. That's correct.

6 MR. WAITO: A. If I might add one point
7 here with respect to spruce. You will note that for -
8 on page 14 for spruce that all three of those
9 techniques have a 1 in front of them under the
10 silvicultural prescription.

11 So, in other words, block or strip
12 cutting under the right site conditions and on the
13 right sites is a preferred method of renewal; it is not
14 the second choice under those circumstances, as with
15 root seed tree.

16 So in that case -- in this particular set
17 of groundrules site preparation followed by planting is
18 not necessarily the first choice on these particular
19 site types. I think they tried to recognize that. As
20 Peter has indicated, natural regeneration of spruce in
21 particular is very, very site-specific, but a viable
22 regeneration and renewal method when practised on the
23 right site.

24 Q. So is it the Ministry's position
25 then that only 3 to 5 per cent of the site types in the

1 boreal forest are suitable for black spruce
2 regeneration for modified cutting? Is that what we
3 should infer from that position?

4 A. I don't think so. I don't know what
5 the per cent is. I think sort of embodied in the whole
6 thing is, again, the risk of failure and if, given the
7 option possibly even on sites where modified cutting
8 may have been an alternative, the option may still be
9 to choose planting, I wouldn't want to suggest that 3
10 to 5 per cent is the minimum, but I wouldn't want to
11 hesitate a guess as to how much could be done; I just
12 don't know.

13 MS. SWENARCHUK: This will probably be a
14 convenient place for a break, Mr. Chairman.

15 THE CHAIRMAN: Okay. The Board will rise
16 for the lunch hour until 2:00 p.m. at which time we
17 will come back and deliver our ruling on the pesticides
18 issue at that time.

19 MS. SWENARCHUK: It is beginning to look
20 unlikely that I will finish today, to my extreme
21 regret, Mr. Chairman.

22 THE CHAIRMAN: Thank you.

23 ---Luncheon recess taken at 12:10 p.m.

24 ---On resuming at 2:05 p.m.

25 THE CHAIRMAN: Thank you. Be seated,

1 please.

2 Ladies and gentlemen, as indicated, the
3 Board is going to deliver its ruling on the matter
4 concerning the use of pesticides and for the purposes,
5 as you will see from this ruling, the term pesticides
6 will include herbicides as well and you will find it in
7 this ruling.

8 What I intend to do is read the ruling
9 into the record, and it will be available in a few
10 minutes from Mr. Mander, and it will also be on the
11 record in the transcript so that others who look at the
12 transcripts only will be able to find out the details
13 of it. I am not going to go through the style of cause
14 for the proceeding, it is on plenty of documents.

15 The ruling is entitled:

16

17 RULING AND REASONS

18

19 Forests for Tomorrow, a coalition of five groups and/or
20 organizations in opposition to the Ministry of Natural
21 Resources' application before the Board, brought a
22 motion pursuant to the Board's Rules of Practice and
23 Procedure for:

24

25 (a) an order compelling the proponent to call a

1 witness or witnesses of its choice qualified
2 to give testimony on the potential health effects
3 of the pest control products and formulations the
4 proponent proposes to use within the area of the
5 undertaking, after preparation and submission to
6 the Board and the parties of a witness statement
7 or statements for Panels XII and XIII, speaking
8 to the potential human health effects of said
9 products in compliance with section 5(3) of the
10 Environmental Assessment Act;

11
12 (b) in the alternative, an Order compelling the
13 proponent to call as its witness Leonard Ritter,
14 to testify on the potential human health effects
15 of the pest control products and formulations the
16 proponent proposes to use within the area of the
17 undertaking, after preparation and submission to
18 the Board and the parties of a witness statement
19 or statements for Panels XII and XIII speaking to
20 the potential health effects of said control
21 products in compliance with section 5(3) of the
22 Environmental Assessment Act;

23
24 (c) in the further alternative, an Order requiring
25 the proponent to withdraw from its statement

1 of evidence for Panel XII the document entitled
2 "Regulation of Pesticides in Canada", prepared
3 by Wayne S. Ormrod and Leonard Ritter, dated
4 December 14th, 1988 and paragraphs 1, 2 and 3
5 of the witness statement, being pages 66 and
6 67 of the said Panel, and paragraph 1 of Panel
7 XIII witness statement, being pages 65 of the
8 Panel; and
9

10 (d) such further and other relief as counsel may
11 advise or this Board permit.
12

13 In view of the importance of this issue in terms of the
14 undertaking before the Board and the potential impact
15 of the Board's ruling on the hearing process relative
16 to this hearing and others, the Board requested that
17 the applicant and all parties who wish to respond to
18 this motion prepare written statements of fact and law
19 to be filed with the Board and exchanged among the
20 parties receiving full-time correspondence.
21

22 The Board thereupon set May 8th as the date for the
23 return of the motion and on May 8th and May 9th, 1989,
24 heard submissions from counsel from Forests for
25 Tomorrow, the Ministry of the Environment (MOE), the

1 Ontario Forest Industry Association and Ontario Lumber
2 Manufacturers' Association (OFIA/OLMA) and the Ministry
3 of Natural Resources (MNR).
4

5 In addition, counsel for the Nishnawbe-Aski Nation and
6 Windigo Tribal Council filed a statement of fact and
7 law for consideration by the Board and indicated
8 through a representative at the hearing that counsel
9 would not be presenting further oral argument.
10

11 The applicant's motion raises essentially four
12 fundamental issues:
13

14 (1) Does the Board have the jurisdiction to compel the
15 proponent to adduce evidence to deal with a
16 specific matter either orally or by calling a
17 witness or witnesses, or through the filing of a
18 study or report; if so, under what circumstances?;
19

20 (2) Is it incumbent upon the proponent to submit to
21 the Board evidence on the potential human health
22 effects of pest control products and formulations
23 the proponent proposes to use within the area of
24 the undertaking, as part of its environmental
25 assessment, in order to comply with the provisions

1 of section 5(3) of the Environmental Assessment
2 Act?;

3
4 (3) If the answer to question 2 is yes, is the
5 proponent entitled to rely on existing federal and
6 provincial regulatory regimes regarding the
7 registration and use of herbicides and
8 insecticides (hereinafter referred to as
9 "pesticides") without calling further evidence in
10 satisfaction of its obligation under section 5(3)
11 of the Environmental Assessment Act?; and
12

13 (4) Notwithstanding that the particular pesticide in
14 question has received federal and provincial
15 regulatory approval for use in Canada and Ontario,
16 does the Board have the jurisdiction under the
17 provisions of the Environmental Assessment Act to
18 impose more stringent conditions of use or, in the
19 alternative, to prohibit the use of such
20 pesticides by MNR with respect to activities
21 associated with renewal and/or tending within the
22 area of the undertaking?
23

24 The issues enumerated above give rise to further issues
25 concerning the role of intervenors in the environmental

1 assessment process itself. In the event that further
2 evidence on the potential human health effects of
3 pesticides used within the area of the undertaking is
4 deemed relevant and/or necessary by the Board in this
5 application, what, if any, limitations should be placed
6 upon such evidence, bearing in mind that the primary
7 purpose of the proponent's application is not only to
8 seek approval for the use of pesticides.

9
10 In the course of rendering its decision on the
11 applicant's motion, the Board proposes to deal with
12 each of the four principal issues and also with
13 collateral process issues, in view of their relative
14 importance to both this class environmental assessment
15 and the environmental assessment process in general.

16
17 DISCUSSION OF ISSUES

- 18
19 (1) Does the Board have the jurisdiction to compel the
20 proponent to adduce evidence to deal with a
21 specific matter either orally by calling a witness
22 or witnesses, or through the filing of a study or
23 report; if so, under what circumstances?

24
25 The Board has carefully reviewed the submissions

1 made by the parties on this question and has
2 concluded that it does not have the jurisdiction
3 to compel parties to call witnesses for the
4 following reasons:

5
6 Mr. Castrilli, on behalf of Forests for Tomorrow,
7 argued that MNR has the statutory obligation under
8 section 5(3) of the Environmental Assessment Act
9 to include an assessment of the potential human
10 health effects of pesticides to be used by the
11 proponent within the area of the undertaking, and
12 that the Board has the authority under its own
13 Rules of Practice to compel procedural compliance
14 with the statutory obligations imposed upon the
15 proponent.

16
17 Setting aside for the moment a determination of
18 the proponent's statutory obligations under
19 section 5(3) of the Environmental Assessment Act
20 and assuming that the proponent does have the
21 statutory obligation to deal with potential
22 impacts on human health of pesticides used within
23 the area of the undertaking, any authority for the
24 Board to compel the proponent to call witnesses
25 cannot be founded upon an interpretation of its

1 Rule 4, unless this authority is "permitted by
2 law".

3
4 Rule 4 of the Board's Rules of Practice and
5 Procedure states:

6 "Where any matter arises during the course
7 of any proceeding that is not contemplated
8 by these Rules, the Board may do whatever is
9 necessary and 'permitted by law' to enable
10 it to effectively and completely adjudicate
11 on the matter before it."

12
13 This Board, as is the case with many other
14 statutory tribunals, must rely on the provisions
15 of the relevant statutes for its powers and
16 authority. There is nothing in either the
17 Environmental Assessment Act or the Statutory
18 Powers Procedure Act which confers upon the Board
19 the authority to compel the proponent to call
20 witnesses, and indeed a review of the relevant
21 case authorities would indicate that such power is
22 not permitted by law.

23
24 Clearly Rule 4 was intended to provide some
25 flexibility in terms of the procedural aspects of

1 proceedings before the Board, and cannot be
2 interpreted to confer upon the Board the
3 jurisdiction to exercise powers which are not
4 conferred upon it by stature or are otherwise not
5 permitted by law.

6
7 In the Board's view, section 18(9) of the
8 Environmental Assessment Act provides no
9 assistance on this question because it deals with
10 the Board's statutory authority to appoint an
11 expert on behalf of the Board for the purpose of
12 assisting the Board in connection with any matter
13 before it, and that specific provision cannot be
14 interpreted to enable the Board to compel another
15 party to provide evidence by means of calling a
16 witness.

17
18 When looking at the case authorities one must be
19 cognizant of the nature of the Board's
20 proceedings, which has been characterized by
21 several of the parties in opposition to the
22 applicant's motion as essentially "adversarial".
23 Although the Board does not disagree with this
24 characterization, it must also point out that the
25 Board views its role of protecting the public

1 interest as one which permits the Board to involve
2 itself actively in the process. This involves
3 clarifying the evidence before it and, in some
4 cases, to call witnesses of its own to provide
5 evidence which has been inadequately covered and
6 which the Board deems necessary to adjudicate
7 effectively and completely on the application
8 before it. To this extent the hearing process
9 before a quasi-judicial administrative tribunal
10 such as the Environmental Assessment Board is
11 different from a court exercising its jurisdiction
12 in the context of a civil case. These
13 distinctions in the Board's view do not affect the
14 general principles set forth in the case law
15 concerning the Board's authority to compel a party
16 to call witnesses.

17
18 Counsel for OFIA/OLMA cited an extract from the
19 civil law textbook by Sopinka and Lederman at page
20 475 for the proposition that "under the adversary
21 system of justice, the calling of witnesses is the
22 function of the parties and not the court."
23 Authority for this proposition was found in the
24 case of Re Fraser; Fraser v. Robertson; McCormick
25 v. Fraser [(1912) 26 O.L.R., 508], wherein Garrow,

1 J. said at page 512:

2
3 "The court has, apparently, no power of its own
4 and without the consent of both parties to direct
5 further evidence to be given...the parties, and
6 not the court, are domini litis in all civil
7 proceedings. If a party comes into court with an
8 imperfect case, the proper penalty is dismissal."

9
10 This view is further supported in the case of
11 Harwood and Cooper v. Wilkinson [(1929), 64 O.L.R.
12 658], where Riddell, J.A. said at page 663 that:

13
14 "Counsel, not the judge, is to determine what
15 witnesses he is to call in support of his case";

16
17 Further, in the case of Connor v. Township of
18 Brant [1914) 31 O.L.R. 274] the court stated at
19 page 282:

20
21 "It is quite true that the functions of tribunals
22 appointed to determine cases are primarily and
23 essentially judicial, not inquisitorial. the
24 tribunal is to judge and to decide; to supply the
25 proofs - the materials for decision - belongs in

1 general to the litigant parties. But, as Mr. Best
2 observes, the inquisitorial principle is
3 recognized thus far, that the tribunal is
4 empowered to extract facts from the instruments of
5 evidence adduced, and in some cases to compel the
6 production of others which have been
7 withheld...but it would appear that a Judge is not
8 hampered by the rule against leading questions,
9 the foundation for which shows that it is not
10 applicable in the case of a presiding Judge."

11
12 Although Mr. Castrilli argued that there is no
13 case which specifically extends the application of
14 this general principle of law to the courts to
15 administrative tribunals, the Board is of the view
16 that that principle does apply, and accordingly
17 precludes the Board from compelling a party to
18 call witnesses against the wishes of that party.

19
20 The above principle, of course, does not prevent
21 the Board from ordering a party to produce a
22 document, or study within that party's possession,
23 and both the law and rules with respect to the
24 production of documents in this regard is not in
25 question.

1
2 (2) Is it incumbent upon the proponent to submit
3 evidence on the potential human health effects of
4 pesticides which the proponent proposes to use
5 within the area of the undertaking, as part of its
6 environmental assessment, in order to comply with
7 section 5(3) of the Environmental Assessment Act?

8
9 Section 5(3) of the Environmental Assessment Act
10 sets out the statutory requirements in general
11 terms of an environmental assessment document
12 submitted to the Minister pursuant to subsection
13 (1) of section 5. The Act specifies that the
14 environmental assessment shall consist of:

- 15
16 (a) a description of the purpose of the
17 undertaking;
18 (b) a description of and statement of the
19 rationale for,
20 (i) the undertaking,
21 (ii) the alternative methods of carrying out the
22 undertaking, and
23 (iii) the alternatives to the undertaking;
24 (c) a description of,
25 (i) the environment that will be affected or

- 1 that might reasonably be expected to be
2 affected directly or indirectly,
3 (ii) the effects that will be caused or that
4 might reasonably be expected to be caused to
5 the environment, and
6 (iii) the actions necessary or that may reasonably
7 be expected to be necessary to prevent,
8 change, mitigate or remedy the effects upon
9 or the effects that might reasonably be
10 expected upon the environment, by the
11 undertaking, the alternative methods of
12 carrying out the undertaking and the
13 alternatives to the undertaking; and
14 (d) an evaluation of the advantages and
15 disadvantages to the environment of the
16 undertaking, the alternative methods of
17 carrying out the undertaking and the
18 alternatives to the undertaking.

19
20 It is clear, therefore, that the proponent must
21 include, inter alia, within its environmental
22 assessment, a description of the environment that
23 could be affected by the undertaking; the effects
24 either caused or likely to be caused to the
25 environment; a description of the actions

1 necessary to prevent, change, mitigate or remedy
2 these effects; an evaluation of the advantages and
3 disadvantages to the environment of the
4 undertaking; the alternative methods of carrying
5 out the undertaking and the alternatives to the
6 undertaking.

7
8 Inasmuch as the definition of "environment" under
9 the Act goes far beyond the natural environment
10 and specifically includes "plant and animal life,
11 including man", there is little doubt, in the
12 Board's view, that the proposed activities of the
13 proponent must be evaluated or assessed in the
14 light of the effect or potential effect of these
15 activities upon humans.

16
17 The proponent has clearly indicated in its
18 environmental assessment document (filed in these
19 proceedings as Exhibit 4) that it intends to use
20 certain pesticides for the purposes of assisting
21 the proponent in its regeneration and/or tending
22 activities.

23
24 The Board is therefore in agreement with Mr.
25 Castrilli that the Act clearly confers an

1 obligation upon the proponent to describe the
2 effects of the use or proposed use of pesticides
3 upon humans and to describe the actions necessary
4 or that may reasonably be expected to be necessary
5 to prevent, change, mitigate or remedy the effects
6 or potential effects caused by the proposed
7 activities associated with the proponent's
8 undertaking.

9
10 Members of the Environmental Assessment Board
11 have, on several occasions, articulated the
12 Board's view that the environmental assessment
13 process is an evolving one, and is not confined to
14 only those matters raised in the environmental
15 assessment documentation submitted pursuant to
16 section 5(1) of the Act. Matters pertaining to
17 the environmental assessment, included under the
18 specific heads which are set out in section 5(3)
19 of the Act, which was read above, may be addressed
20 either in the documentation filed with the
21 Minister or in documentation or other oral
22 evidence admitted by the Board during the course
23 of the hearing itself.

24
25 This statement of principle was addressed at

1 length by the Chair of the hearing panel in his
2 dissenting opinion with respect to the Regional
3 Municipality of Hamilton-Wentworth Expressway
4 decision of the Joint Board dated October 24th,
5 1985 at pages 293-300 (Registrar's File No. CH
6 82-08) and the reasons set out in that opinion
7 need not be reproduced here. It is a view which
8 has been endorsed in subsequent cases.

9
10 The proponent in this case has indicated its
11 intention to address this issue as to whether or
12 not the use of pesticides within the area of the
13 undertaking will result in human health effects on
14 the basis of relying upon the fact that said
15 pesticides had been registered for use in a
16 prescribed manner in accordance with the
17 provisions of federal and provincial regulatory
18 legislation. In reaching a conclusion at this
19 stage of the proceedings that further evidence
20 relating to the potential health effects from the
21 use of pesticide is not necessary, the proponent
22 is exercising its discretion and judgment. This
23 may or may not be held to be deficient by the
24 Board which must ultimately render a decision on
25 the acceptability of the environmental assessment

1 at the conclusion of the case after hearing all of
2 the evidence by all of the parties.

3
4 It may well be that the proponent will, as the
5 result of the interrogatory process, scoping
6 sessions, cross-examination by parties in
7 opposition, or, as the result of indications put
8 forward by the Board itself, elect to call more
9 evidence than it originally intended, and there
10 are mechanisms available in terms of the
11 administrative law process to accommodate this
12 end. On the other hand, the proponent may feel
13 that it has satisfied whatever burden of proof may
14 be applicable to the circumstances at hand and is
15 prepared to "assume the risk" by electing not to
16 call further evidence.

17
18 The Board has therefore reached the conclusion
19 that it is premature prior to hearing all of the
20 evidence, to determine whether or not the
21 proponent has met its statutory obligation under
22 section 5(3) of the Environmental Assessment Act,
23 and accordingly will decline to do so.

24
25 Likewise, the Board will not direct the proponent

1 as to what to include or not to include within its
2 case, as this surely must remain within the
3 discretion of the party upon whom the burden of
4 proof rests.

5
6 Having said this, however, the Board does take the
7 view, particularly in lengthy proceedings, that it
8 is in the public interest for the Board to
9 indicate at an early stage those areas where the
10 Board is concerned about the level of detail or
11 sufficiency of evidence, in order that the party
12 to whom that concern is directed might, if it so
13 wishes, attempt to address those concerns in a
14 timely fashion.

15
16 The Board will in fact attempt to provide such
17 guidance with respect to the potential health
18 effects from the use of pesticides later in this
19 ruling.

20
21 (4) Notwithstanding that the particular pesticide in
22 question has received federal and provincial
23 regulatory approval for use in Canada and Ontario,
24 does the Board have the jurisdiction under the
25 provisions of the Environmental Assessment Act to

1 impose more stringent conditions of use or, in the
2 alternative, to prohibit the use of such
3 pesticides by MNR with respect to activities
4 associated with renewal and/or tending within the
5 area of the undertaking?

6
7 This question to some extent overlaps with
8 question 3 above, for it is evident from the
9 submissions by counsel that the requirements of
10 the existing federal and provincial regulatory
11 regimes are somewhat different from the
12 requirements of the Environmental Assessment Act
13 set out in section 5(3).

14
15 Mr. Castrilli has pointed out that the
16 registration of pesticides under the federal Pest
17 Control Products Act and the Ontario Pesticides
18 Act does not entail a process analogous to an
19 environmental assessment, nor have applications
20 for registration been subject to public scrutiny
21 in the form of a public hearing process. In
22 addition, Mr. Castrilli points out that neither
23 the federal nor provincial regulatory process
24 relating to pesticides requires an evaluation of
25 alternatives to the use of such pesticides as is

1 required under the provisions of the
2 Environmental Assessment Act (section 5(3)).

3
4 MNR, on the other hand, responded by stating that
5 the review, approval, scheduling, licensing and
6 permit systems in place under the federal and
7 provincial and regulatory schemes address the
8 issues of potential human health effects of pest
9 control products and the actions necessary to
10 ensure an acceptable level of risk, and that there
11 is a reasonable presumption that the use of
12 registered products in accordance with that
13 legislation will not result in significant adverse
14 human health effects.

15
16 Whether or not this is in fact the case will have
17 to await a decision of the Board after hearing all
18 of the evidence brought before the Board by all
19 parties, including those in opposition. MNR
20 further stated that it did not rely on the
21 "Ritter" document and provided the document
22 as part of its statement of evidence for Panel XII
23 for informational purposes only.

24
25 On the question of jurisdiction, however, the

1 Board is clearly of the view that the federal and
2 provincial regulatory regimes with respect to the
3 registration of pesticides, do not in any way
4 preclude the Board from considering the potential
5 health effects from the use of these products on
6 the environment in the context of the provisions
7 of the Environmental Assessment Act. Indeed, none
8 of the parties seriously contest the Board's
9 jurisdiction to consider these potential effects,
10 and the mere fact that the products in question
11 have been registered for use under other
12 legislation does not deprive the Board of
13 jurisdiction under the Environmental Assessment
14 Act.

15
16 Having concluded that the Board does in fact have
17 concurrent jurisdiction concerning the use of
18 pesticides within the area of the undertaking, can
19 the Board impose more stringent conditions of use
20 or, in the alternative, prohibit the use of such
21 pesticides by MNR with respect to activities
22 associated with renewal and/or tending within the
23 area of the undertaking?

24
25 It is clear that under the provisions of section

1 12(2) of the Environmental Assessment Act, the
2 Board does have the power to impose terms and
3 conditions when giving approval to proceed with
4 the undertaking, and there is nothing in the Act
5 which fetters the Board's discretion in this
6 regard.

7
8 Section 14(1)(b) sets out a list of the types of
9 terms and conditions that might be imposed by the
10 Minister when the Minister is giving approval to
11 proceed with the undertaking; however, in the
12 Board's view, it is not restricted to the items
13 set out on this list, although it may well provide
14 useful guidance to the Board in exercising its
15 discretion under section 12(2)(d)(e).

16
17 The Board has also concluded that in exercising
18 its discretion under section 12(2) of the Act it
19 may go beyond the terms and conditions which may
20 have been imposed in conjunction with the
21 decisions of other regulatory authorities
22 exercising jurisdiction under other legislation.
23 Thus the Board could, if it chose to do so, impose
24 a condition either restricting or prohibiting the
25 use of a particular pesticide within the area of

1 the undertaking, notwithstanding that the said
2 pesticide had been approved for use under the
3 applicable federal and provincial legislation, if
4 the Board felt that such a condition were
5 necessary to fulfill the purposes of the Act,
6 namely:

7 "to provide for the protection, conservation
8 and wise management in Ontario of the
9 environment."

10
11 The degree to which the registration processes of
12 pesticides and other regulatory legislation
13 satisfy the requirements of the Environmental
14 Assessment Act is a matter for the Board to
15 determine on the facts of the specific case before
16 it, and such determination cannot be made until
17 the Board has heard all of the evidence with
18 respect to this issue.

19
20 Turning now to the process issue of a more general
21 nature, the Board wishes to comment on Mr. Castrilli's
22 submission to the effect that the role of intervenors
23 to these proceedings is to rebut the case of the
24 proponent, and that the nature of rebuttal evidence is
25 that it responds to the case of the proponent.

1

2 In advancing this argument Mr. Castrilli stated that it
3 would be highly prejudicial to his client to place upon
4 them by default any evidentiary burden where no burden
5 exists under the statute, and at the same time to
6 permit the proponent to evade its very clear duties
7 under the Act to prove its case on at least the balance
8 of probabilities.

9

10 With respect, the Board disagrees with this
11 interpretation of an intervenor's role in proceedings
12 before this Board. It has always been open to
13 intervenors to call evidence of their own dealing with
14 matters which may not have been raised by the
15 proponent, and indeed, this is one of the principal
16 mechanisms by which intervenors have sought to advance
17 their respective interest in opposing the application
18 before the Board. To preclude relevant evidence from
19 the Board's considerations simply because the proponent
20 failed to address any particular issue does not, in the
21 Board's view, materially assist the hearing process,
22 and would likely lead to a serious impairment of an
23 intervenor's ability to participate effectively in the
24 overall environmental decision-making process.

25

1 It must be recognized that although the environmental
2 assessment under the present legislation is
3 proponent-generated, it is virtually impossible for
4 proponents to second guess every issue that might be
5 raised by parties in opposition. Consequently, the
6 process must be flexible enough to allow issues to be
7 introduced or addressed by intervenors, which may not
8 have been addressed in the first instance to the
9 satisfaction of those in opposition.

10
11 the other hand, the Board does not mean to imply that a
12 proponent's failure to fulfill any statutory obligation
13 it might have under the relevant legislation in any way
14 shifts the onus or burden to do so to any party in
15 opposition. The foregoing statement, however, stands
16 for the proposition that an intervenor has the right to
17 lead relevant evidence pertaining to matters before the
18 Board, whether or not the proponent has led evidence on
19 that particular issue.

20
21 In this way it is entirely possible that an intervenor
22 may, in effect, remedy a defect in the proponent's
23 application although, of course, there is no obligation
24 or onus upon an intervenor to do so.

1 To hold otherwise would deprive the parties, the Board,
2 and indeed the public at large of a very significant
3 positive contribution that intervenors can often make
4 to the hearing process.

5
6 Having reached the conclusion that the proponent does
7 have a statutory obligation to address the issue of
8 potential health effects on humans from the use of
9 pesticides within the area of the undertaking under the
10 provisions of section 5(3) of the Environmental
11 Assessment Act, and that this obligation may not
12 necessarily have been met in its entirety by the mere
13 fact that the pesticides in question have been
14 registered for use pursuant to other federal and
15 provincial regulatory legislation, the Board wishes to
16 express its concern over what this might mean in the
17 context of this particular hearing.

18
19 It is apparent from the submissions made by counsel
20 that the procedures for the registration,
21 classification, and authorization to use pesticides
22 under both the federal Pest Control Products Act and
23 the provincial Pesticides Act, together with the
24 relevant regulations, require prior submission of data
25 in areas such as effectiveness, toxicity, environmental

1 effects and risk assessment which includes, to some
2 degree, potential human health effects.

3
4 Bearing in mind that the proponent proposes to use a
5 number of different pesticides in association with its
6 renewal and tending activities within the area of the
7 undertaking, an intensive review at this hearing of
8 all data considered by other regulatory authorities or
9 all other existing sources of data on the products
10 would likely add several months, if not years, to what
11 is already a lengthy, complex and costly proceeding.

12
13 The use of pesticides, in the context of the
14 proponent's overall undertaking, although constituting
15 an issue which may have serious environmental effects,
16 is nevertheless one which should not be allowed to turn
17 the present proceeding into one which goes beyond what
18 is necessary to permit the Board to fulfill its
19 statutory mandate under the Act.

20
21 The Board is prepared to indicate to the proponent at
22 this time that it is concerned with the potential
23 effects on human health from the proposed use of these
24 pesticides, and will be endeavoring to satisfy itself
25 after hearing all of the evidence that the proposed use

1 of these pesticides will not have an adverse effect
2 upon the environment.

3

4 In addition, the Board would expect that the evidence
5 led by the parties would address alternatives to the
6 proposed use of said pesticides in association with the
7 proposed activities of the proponent within the area of
8 the undertaking.

9

10 The degree to which the above concerns require the
11 calling of evidence by the parties must, in the final
12 analysis, be left to the parties themselves, although
13 the Board is primarily interested in evidence which may
14 exist to show that the use of said pesticides within
15 the area of the undertaking will or is likely to cause
16 adverse health effects on humans. In this regard the
17 intervenors will not be precluded from introducing
18 evidence of their own relative to the above concerns.

19

20 DISPOSITION OF MOTION

21

22 On the basis of the foregoing conclusions, the Board
23 therefore shall:

24

25 (a) decline to order the proponent to call a

1 witness or witnesses of its choice qualified
2 to give testimony on the potential human
3 health effects of the pest control products
4 and formulations the proponent proposes to
5 use within the area of the undertaking;
6

7 (b) decline to compel the proponent to call as
8 its witness Leonard Ritter to testify on the
9 potential human health effects of the pest
10 control products and formulations the
11 proponent proposes to use within the area of
12 the undertaking; and.
13

14 (c) decline to order the proponent to withdraw
15 from its statement of evidence for Panel XII
16 the documented entitled "Regulation of
17 Pesticides in Canada", prepared by Wayne S.
18 Ormrod and Leonard Ritter, dated December
19 14th, 1988, and paragraphs 1, 2 and 3 of the
20 witness statement, being pages 66 and 67 of
21 the said Panel, and paragraph 1 of Panel
22 XIII witness statement, being page 65 of the
23 said Panel.
24

25 In the event that MNR wishes to adduce further evidence

1 on the potential effects on human health from the use
2 of pesticides within the area of the undertaking in
3 addition to what is described in the statement of the
4 evidence for Panels XII and XIII, the Board shall
5 direct it to provide supplementary statements of
6 evidence outlining such further evidence no later than
7 June 30th to all parties receiving full-time
8 correspondence. A scoping session with respect to
9 evidence concerning the use of pesticides will be
10 scheduled upon resumption of the hearing on August 8th,
11 1989, and a date will then be set for the hearing of
12 this evidence.

13
14 The Board wishes to express its gratitude to all
15 parties for their very thorough submissions, which the
16 Board found most helpful in arriving at its decision on
17 this motion. And this ruling is dated today.

18
19 The Board apologizes for taking such a lengthy time to
20 read it into the record, but it does deal with some
21 rather important issues and the Board felt that it
22 should be on the record verbatim.

23
24 The Board will be instructing Mr. Mander to hand out
25 copies of what I have just read into the record, which

1 is reproduced in full for all of the parties, and if
2 you missed anything in your note-taking you will see it
3 in print shortly.

4 THE CHAIRMAN: Very well, I think we are
5 back to where we left off, Mr. Swenarchuk.

6 MS. SWENARCHUK: I am informed that Ms.
7 Kleer is here this afternoon and she indicates that she
8 has about 20 or 30 minutes' worth of questions to ask
9 and I think it would be unfair really to ask her to
10 wait until tomorrow since she is here. I am prepared
11 to let her go first and do that now.

12 THE CHAIRMAN: All right. If it won't
13 interrupt your presentation the Board will hear from
14 Ms. Kleer now.

15 Thank you.

16 MR. FREIDIN: Mr. Chairman, I take it
17 because the panel members weren't advised until this
18 morning that there may be cross-examination on this
19 matter, that if they feel that they are somehow unable
20 to deal with the question in a full manner because they
21 don't have access to documentation that would normally
22 have been available in Thunder Bay that they would be
23 free to so indicate to the Board and we could
24 supplement our information at a later time.

25 THE CHAIRMAN: Yes, I think that would be

1 fair. And I am sure, Mr. Freidin, you will be leaping
2 to your feet if you perceive any unfairness in the
3 cross-examination.

4 MR. FREIDIN: I think I have been doing
5 fairly well in not doing that today.

6 THE CHAIRMAN: Ms. Kleer?

7 MS. KLEER: Good afternoon. I would like
8 to first introduce Interrogatories 4 and 8 of
9 Nishnawbe-Aski Nation and their answers by MNR as an
10 exhibit, and I have copies here.

11 THE CHAIRMAN: Do the witnesses have
12 these, do you know?

13 MS. BLASTORAH: Yes, they do, Mr.
14 Chairman, they were provided to us before the lunch
15 break. Now, we only have the copies of the actual
16 interrogatories, we don't have the documents that are
17 referred to in those interrogatories.

18 THE CHAIRMAN: Ms. Kleer, is that going
19 to be a problem?

20 MS. KLEER: No, I don't think so.

21 THE CHAIRMAN: Okay. Have these been
22 exhibited yet?

23 MS. KLEER: No, I would like to make them
24 an exhibit.

25 THE CHAIRMAN: This will be Exhibit 596.

1 MS. KLEER: I guess we can just call it
2 NAN Interrogatories 4 and 8.

3 THE CHAIRMAN: Very well.

4 ---EXHIBIT NO. 596: NAN Interrogatory Nos. 4 and 8 and
5 answers thereto.

6 MS. KLEER: I will also be referring to
7 Table 15 of the witness statement for Panel 11 starting
8 at page 865 and specifically to 867.

9 CROSS-EXAMINATION BY MS. KLEER:

10 Q. Turning then to page 867, I would
11 like to refer to the statement on the right-hand column
12 at the bottom which deals with tree planting and I will
13 just read from that. Do we all have it in front of us?
14 Okay. At page 867 the witness statement reads:

15 "The Ministry of Natural Resources has
16 and will continue to hire native tree
17 planters and advise native groups on
18 establishing contracting companies to bid
19 on company, Crown or FMA planting
20 contracts."

21 I would like to address my questions to
22 you, Mr. Clark. What criteria are used in the awarding
23 of tree planting contracts?

24 MR. CLARK: A. Well, basically tenders
25 are put out and bids are received and the specific

1 criteria that are established, I guess you would have
2 to look to in the tender itself.

3 Q. What advice has been given to native
4 groups on establishing contracting companies to date?

5 A. I can't say specifically. I did have
6 some material put together on this, but as I didn't
7 receive any advice on your being here today I left all
8 of that material in Thunder Bay.

9 So I am not really in a position to give
10 you specific information on those instances where
11 advice has been given, but I do know that some training
12 sessions and I believe some direct advice has been
13 given to individual Bands concerning ways in which they
14 can get involved.

15 Q. At some point then we would like to
16 have that evidence put into the record. Is that going
17 to be possible?

18 A. Could you be more specific in terms
19 of what you are interested in?

20 Q. Well, I would like to have a few
21 examples at any rate where the specific -- of specific
22 instances where you have given advice to different
23 native groups and specifically with reference to
24 Nishnawbe-Aski Nation.

25 THE CHAIRMAN: Is that with respect to

1 tree planting contracts?

2 MS. KLEER: Yes, with respect to tree
3 planning contracts.

4 Q. My next question is: Is it true that
5 up until fairly recently the Ministry has hired natives
6 directly for tree planting?

7 MR. CLARK: A. That is correct.

8 Q. And then is it true that MNR has
9 recently changed its practice so as to contract its
10 work out to contractors?

11 A. Yes, that is also correct.

12 Q. How recently was that change made?

13 A. Well, I am not sure, some of the
14 other gentlemen here may be more specific. It has been
15 over the last, I would say, three or four years.

16 MR. GREENWOOD: A. The process of
17 contractors started to take place around 1980/81 and
18 progressed from there. I think the first ones were
19 around the same time as the first FMAs were signed, if
20 I am not mistaken.

21 Q. Okay. To your knowledge then have
22 any native contracting companies been established to
23 date?

24 MR. CLARK: A. As I say, I did put that
25 material together and I can't recall the details.

1 Q. Okay.

2 A. I believe they have been, yes.

3 Q. I would again like details on that at
4 a future point?

5 A. These would all have been good
6 interrogatories, I might add.

7 Q. And when you are going through your
8 evidence I would also like you to check, and maybe you
9 can answer this question now: Have any native
10 contracting companies actually been awarded any
11 contracts?

12 MR. FREIDIN: Mr. Chairman, I would just
13 reiterate what Mr. Clark said, if these specific
14 questions were of concern to Nishnawbe-Aski Nation I
15 think they should have been asked by way of
16 interrogatory.

17 THE CHAIRMAN: Well, that may well be the
18 case, Mr. Freidin. Obviously Ms. Kleer is not going to
19 get the answer she desired today either, but the Board
20 doesn't feel that this will place an undue obligation
21 on Mr. Clark since he indicates he has already gathered
22 together this information to provide it at a future
23 date.

24 MS. KLEER: Q. I have one further
25 question on the tree planning contracts. As a result

1 of the transition to hiring out of work, could you
2 state that it is true that fewer natives have been
3 employed in tree planting?

4 MR. CLARK: A. Yes, that is true.

5 Q. Would you have any statistics on
6 that, not available here right now?

7 A. I am not sure just how comprehensive
8 our statistics are, but some of the preliminary
9 information that I received prior to coming here
10 indicated that there was, for example, in northwestern
11 Ontario a significant decline in the number of native
12 people who were hired directly for tree planting
13 purposes.

14 Q. Okay, thank you.

15 THE CHAIRMAN: Is that by MNR or by the
16 other outside contractors?

17 MR. CLARK: Well, I believe it is -- it
18 is definitely by MNR because we are just not doing as
19 much tree planting; we are doing very little tree
20 planting on our own. The majority of it is contracted
21 out now.

22 THE CHAIRMAN: No, but has there been a
23 decline over what MNR--

24 MR. CLARK: Yes.

25 THE CHAIRMAN: --like percentage-wise,

1 the number of natives that have --

2 MR. CLARK: No, I am going to have to
3 review that material again, but my understanding is
4 that there has been.

5 MS. KLEER: Q. What about then with
6 respect to the contracting companies, would there also
7 be a decrease in numbers?

8 MR. CLARK: A. I believe that's the case
9 but I would like to confirm it.

10 Q. Okay. Then I would like to turn to
11 Interrogatory No. 8 which is the second page in Exhibit
12 596. With respect to Question No. 4, we will be
13 referring to that later, we wanted to introduce it at
14 this time.

15 In Interrogatory No. 8 NAN requested
16 examples of decisions where any of the identified
17 socio-economic impacts referred to in Table 15 resulted
18 in mitigation measures for NAN communities.

19 MNR's answer was that there were no such
20 examples of decisions which dealt with any of the
21 socio-economic impacts. Do you agree with this answer
22 that was given in the interrogatory?

23 A. Yes, I did put that answer together.

24 Q. Okay. In compiling Table 15 then,
25 which deals with the impacts and mitigation measures,

1 how did you arrive at the list of impacts and
2 mitigation measures indicated there?

3 A. Well, as I think I have stated in
4 previous evidence, it was done on the basis of
5 consultation with other staff, my own experience, and
6 on the basis of material provided by other witnesses
7 here.

8 Q. Were any native communities consulted
9 to arrive at this list?

10 A. Not directly. See, the normal source
11 of information on this kind of effect and the way it
12 would be dealt with would be through timber management
13 planning.

14 So that in order to get that information
15 I would contact the district who would be directly
16 involved in timber management planning, they would
17 identify those instances when these kinds of concerns
18 had been identified in the planning process.

19 Q. Would you agree with me that in the
20 absence of any specific examples with respect to the
21 effects -- with respect to either impacts or mitigation
22 measures, that you can't be certain that these
23 mitigation measures would in fact be effective, with
24 respect?

25 A. Oh, you are absolutely correct in the

1 sense that in what you have in the table is a series of
2 potential effects and you have, as I think I have
3 pointed out, a series of generic actions that can be
4 taken at the level of the area of the undertaking in
5 order to deal with them.

6 Now, I think the point that I have
7 stressed throughout is we have to deal with these on a
8 case-by-case basis and we do that through the timber
9 management planning process, more specifically through
10 the area of concern planning process. It is identified
11 in Appendix 1 in our Class Environmental Assessment.

12 MS. KLEER: I have no further questions.
13 Thank you very much.

14 THE CHAIRMAN: Thank you.

15 MS. SWENARCHUK: I just want to refer
16 again briefly to the issue we raised this morning
17 having to do with what site types are normally planted,
18 and I would like to distribute part of an answer to on
19 OFAH interrogatory of which I have copies.

20 It is OFAH Interrogatory Question No. 1
21 and in response to that, Mr. Chairman, the Ministry
22 produced numerous regeneration policy directions and I
23 just want to file the one that has to do with planting.

24 MR. FREIDIN: Have the witnesses got that
25 one? I don't believe you gave us notice that you were

1 going to be referring to that specific one.

2 MS. SWENARCHUK: I think I will have
3 copies.

4 MR. FREIDIN: All right. Sorry.

5 MS. SWENARCHUK: (handed)

6 THE CHAIRMAN: Thank you. Have these
7 already been exhibited?

8 MS. SWENARCHUK: I don't believe so, Mr.
9 Chairman.

10 MR. FREIDIN: I believe that
11 interrogatory had been filed by the Ontario Federation
12 of Anglers & Hunters but they did not include the
13 attachments.

14 THE CHAIRMAN: All right. We will give
15 the two-page -- or the two submissions making up one
16 document a new exhibit number. Exhibit 597.

17 MR. FREIDIN: Mr. Chairman, could you
18 indicate what the subject is and the policy or
19 directive number?

20 THE CHAIRMAN: Okay. Why don't we
21 have -- Exhibit 597A will be a copy of interrogatory of
22 OFAH Question No. 1 and the policy will be Exhibit
23 597B.

24 ---EXHIBIT NO. 597A: OFAH Interrogatory No.1 and
25 answer thereto.

1 ---EXHIBIT NO. 597B: Policy referred to above.

2 CONTINUED CROSS-EXAMINATION BY MS. SWENARCHUK:

3 Q. Have you had a chance to read this
4 through, Mr. Waito?

5 MR. WAITO: A. Yes, I have.

6 Q. I simply want to confirm with you
7 that this policy statement pertaining to regeneration
8 by planting specifies in the first paragraph that:

9 "Regeneration by planting should be
10 carried out on the most productive sites
11 with the less costly methods reserved for
12 sites of low productive capacity."

13 So it is a preferred method on the most
14 productive sites?

15 A. Yes, it is.

16 Q. And then as well it could be directed
17 towards maintenance of permanent working groups and
18 conversion of working groups, so those are other types
19 of sites on which it could be used?

20 A. Not necessarily other types of sites,
21 but --

22 Q. Other purposes?

23 A. It is another purpose, that's
24 correct.

25 Q. Now, I would like to turn to the

1 Provincial Auditor'S report which is Exhibit 28.

2 MS. SWENARCHUK: It looks like this, Mr.
3 Chairman. (indicating)

4 THE CHAIRMAN: Okay, thank you.

5 MS. SWENARCHUK: It is just identified
6 that this was an audit of forest management activity by
7 the MNR done by the Office of the Provincial Auditor
8 published in 1986.

9 MR. FREIDIN: 1985 I believe.

10 MS. SWENARCHUK: Published in 1986,
11 completed in '85.

12 Q. Mr. Waito, are you familiar with this
13 report?

14 MR. WAITO: A. I have read the report,
15 yes.

16 Q. Now, with respect to measurement and
17 monitoring of FMA silvicultural activities, forest
18 management agreements, the section of the report
19 pertaining to that begins on page 12.

20 I just want to say in general that at the
21 time this report was completed, as I understand it from
22 reading it, only five-year assessments of silvicultural
23 treatments were required by the Ministry on FMAs; is
24 that not correct?

25 A. As is the case, now. Their

1 initial -- the first piece of information that we would
2 receive would be based on a fifth year stocking survey.

3 Q. All right. Then in the annual
4 reports that we talked about this morning, are you
5 saying that until five years after treatment there
6 would be no data in those reports on stocking?

7 A. That's correct.

8 Q. Okay. So then the first five years
9 after any given regeneration treatment, particularly to
10 deal with planting, on an FMA, the Ministry receives no
11 data about stocking?

12 A. That's correct. If -- well, that's
13 correct. The first piece of information or the first
14 information that the MNR would receive on regeneration
15 success would be a fifth year stocking -- the results
16 of a fifth year stocking survey. So that information
17 is not gathered until five years after the treatment
18 was done.

19 Q. Well, the Provincial Auditor looked
20 at that question on page 17 and we see here the title:
21 Monitoring of FMA Silvicultural Activities, and if I
22 can just read the second paragraph:

23 "Considering the planned increase in the
24 number of FMAs, the quality of the
25 silvicultural activities undertaken by

1 the FMA companies will be an increasingly
2 critical factor affecting the successful
3 regeneration of the province's forest."

4 Do you agree with that?

5 A. I agree.

6 Q. "We acknowledge that the Ministry
7 considers FMAs to be cooperative
8 agreements and accordingly feels that
9 they should not be monitoring the work
10 performed by the companies."

11 Now, could you tell me is that still the
12 feeling, to use the word that he uses, or the policy of
13 the Ministry?

14 A. Well, I am not entirely sure of the
15 context that the word monitoring is used here. We do
16 monitor the work, in that each year when silvicultural
17 projects are done and submitted for payment purposes,
18 the work is audited in the field or monitored in the
19 field for compliance with the groundrules, and Mr.
20 Hynard talked of that this morning.

21 So in terms of monitoring, that function
22 is done on an annual basis as the projects are being
23 done.

24 Q. Can I just be clear on that now.
25 Would I be correct in assuming that that monitoring

1 consists of an inspection or monitoring of whether the
2 activity has been carried out as the silvicultural
3 groundrules require?

4 A. That's correct, you prepare --

5 Q. But there is no monitoring at that
6 point of the results of the activity?

7 A. That's correct, it would be
8 characterized as compliance monitoring.

9 Q. So then the auditor went on to say:
10 "In accordance with the FMAs, the
11 first assessment by the Ministry
12 of forest regeneration work performed by
13 the companies is to be made in the
14 fifth year after the work has been done."

15 And you are saying that with respect to
16 results of the work that's still the case?

17 A. That's still the case.

18 Q. All right. Now, if we turn to page
19 45 of the document, we have the Ministry's response to
20 that comment by the Auditor General, and if you want to
21 take a moment and read the page go ahead.

22 A. Okay.

23 Q. All right. So in the second last
24 paragraph the Ministry has said that:

25 "The Ministry will develop and negotiate

1 a requirement that companies report
2 annually on the stocking assessments
3 carried out and their results for each
4 new FMA and renewal of existing FMAs."

5 A. I see that.

6 Q. Now, are you saying that in fact the
7 annual reports still do not provide assessments of
8 results until five years after treatment?

9 A. Mr. Kennedy may be able to answer
10 that as it is tied into the new Timber Management
11 Planning Manual which came out in '86.

12 MR. KENNEDY: A. That's correct. The
13 requirement to complete the annual report is to record
14 the fifth year stocking results. So those are the
15 assessments that are carried out five years after the
16 treatment.

17 Q. Okay. So then it is not a matter of
18 having in each annual report an assessment of the
19 success of the projects that were done in the previous
20 year, or two years or three years, but only at the
21 fifth year level?

22 A. That's correct. Five years after the
23 treatment has occurred.

24 Q. Now, what happens after that? Are
25 there requirements in the sixth year, seventh year,

1 tenth year? What are the other requirements or are
2 there any other requirements?

3 A. The requirement after that would be
4 the assessment of the area for determination of free to
5 grow status.

6 Q. And that occurs at whatever point the
7 company considers it free to grow?

8 A. That's correct.

9 Q. Now, can you indicate how many years
10 after treatment that is normally the case?

11 A. It may be five and it may be as long
12 as ten.

13 THE CHAIRMAN: Mr. Kennedy, is the
14 rationale for having the company do it and have them do
15 it at the end of five years twofold:

16 One, that by that time you would know
17 whether or not there is going to be success, you have
18 some relevant idea of how healthy and how successful
19 the trees are growing, No 1; and, No. 2, if they fail
20 to meet the stocking standards the responsibility is
21 theirs at their expense to make good the shortfall?

22 MR. KENNEDY: Yes, Mr. Chairman, you are
23 correct on both accounts.

24 THE CHAIRMAN: Thank you.

25 MS. SWENARCHUK: Q. With respect to the

1 fact that the retreatment, if it is to occur, is at the
2 company expense, it is correct; is it not - and I
3 believe the Auditor referred to this - that even on
4 those retreatments, the Ministry provides the nursery
5 stock so that remains a public expense?

6 MR. KENNEDY: A. That is correct.

7 Q. Now, if you look at the top of page
8 18 of the Auditor's Report, he indicated some concerns
9 about this five-year time lag. The first paragraph at
10 the top of page 18:

11 "Prior to the signing of the first FMA
12 the Ministry hired a consultant to make
13 recommendations on the administration of
14 the agreements."

15 In his report the consultant stated that
16 he saw:

17 "...a financial hazard and a political
18 risk in paying companies millions of
19 dollars over a five-year period and only
20 after five years assessing the treatments
21 performed by the company as to adequacy
22 or proficiency and that he would strongly
23 urge that the Ministry staff assess the
24 potential success of the treatment on at
25 least an annual basis. In our opinion

1 these are valid concerns."

2 That's the statement of the Auditor. I
3 take it, Mr. Kennedy, you are telling us that that
4 recommendation has not today been followed?

5 A. If I can have a moment, please.
6 Sorry, Ms. Swenarchuk, I lost where you were reading
7 from. Could you repeat that, please?

8 Q. It is the first paragraph on the top
9 of page 18. Then if you want to go on and read the
10 remaining page and the first paragraph on 19, the
11 Auditor specified numbers of areas where we believe a
12 five-year assessment life could have detrimental
13 effects and they specified site preparation, tree
14 planting quality and tending.

15 A. I can advise you that we certainly
16 are not inspecting each and every area that has been
17 regenerated on an annual basis.

18 Q. Fair enough. Now, with respect to
19 site preparation, which is the next paragraph, the
20 Auditor General found that the Ministry does not
21 inspect sites prior to planting although they do that
22 on non-FMA lands. Is that still the case?

23 A. I would say that is not the case. As
24 I indicated earlier this morning, that there is an
25 inspection at the time the invoice is being processed

1 to ensure that the site preparation work has been
2 carried out.

3 Q. And that includes an inspection of
4 the quality of the site preparation?

5 A. No, it does not.

6 Q. Okay. The next paragraph, tree
7 planting quality. Again, the Auditor noted - this is
8 the second paragraph under that heading - that:

9 "Assessments of how well these trees were
10 planted are rarely done and where they
11 are done no adjustment is made to deduct
12 from the company's payment an amount for
13 trees which were planted poorly or not
14 planted at all."

15 Is that still the case, Mr. Kennedy?

16 A. Yes, that is still the case. The
17 responsibility for bringing the areas through to
18 successfully regenerated stands is with the FMA holder,
19 and the way in which MNR ensures that that takes place
20 is to have the holder regenerate the failed areas at
21 their own expense and it is viewed that...

22 Q. All right. Now, at the top of page
23 19 the Auditor indicated that:

24 "Should instances..."

25 This is the second paragraph at the

1 beginning of page 19:

2 "Should instances such as those
3 illustrated arise, the Ministry,
4 according to the terms of the agreement,
5 could force the company to correct a
6 problem at the company's expense."

7 Which is what you just told us; right,

8 Mr. Kennedy?

9 A. That's correct.

10 Q. "However, regardless of whether the
11 company or the Ministry bears the cost of
12 this, we believe more timely assessments
13 would serve to highlight potential
14 problems at an earlier stage thereby
15 enabling the most cost effective action
16 to be taken."

17 Would you agree with that?

18 A. I would. I would also point out that
19 if additional stock; that is planning stock or seeds,
20 were required at an earlier time, the Crown would still
21 be bearing the same expense.

22 Q. Right.

23 MR. MARTEL: Ms. Swenarchuk, could I ask
24 a question based on what you had raised a few minutes
25 ago, tree planting, the question of assessment of how

1 well trees were planted and Mr. Kennedy's answer.

2 On our site visit last week we were told
3 that not only the Ministry but the company - I think I
4 am correct - went back to check and had plots laid out
5 on how well the trees were being planted area after
6 area.

7 I am just having difficulty with the
8 answer that you just gave, Mr. Kennedy, in relation to
9 what I think we heard last week.

10 MRS. KOVEN: My understanding of what we
11 were told is that there is a quality control process
12 that occurs soon after a tree is planted.

13 MS. SWENARCHUK: On an FMA or non-FMA
14 land?

15 MRS. KOVEN: On an FMA land.

16 MR. HYNARD: Companies do that routinely
17 and the reason that they do is they are very concerned
18 about the survival rate of those trees and the success
19 rate of those plantations because otherwise they will
20 be obligated to retreat that area at their own expense.
21 So they do very detailed assessments of tree planting
22 quality, yes.

23 MS. SWENARCHUK: Q. So the company does
24 them. Does the Ministry do them or monitor them?

25 MR. HYNARD: A. I am not aware that the

1 Ministry does, and the reason for that is that there is
2 an essential difference between a tree planting
3 contractor who is being hired to put the trees in the
4 ground and bears no responsibility for the outcome and
5 in that case it is essential that he be monitored to
6 ensure that those trees are correctly planted.

7 In the case of an FMA holder, he has an
8 obligation with respect to the outcome and that is that
9 he will be obligated to retreat at his own expense
10 should the area fail. I think that is embodied in the
11 MNR response on page 45.

12 Q. If I can just -- have you finished,
13 Mr. Martel?

14 MR. MARTEL: Yes.

15 MS. SWENARCHUK: Q. If I can just refer
16 to the third paragraph on the top of page 19. I think
17 this summarizes the Auditor General's concerns even
18 given that the company carries this responsibility in
19 the long-term:

20 "Furthermore, it should be noted that
21 even for those sites where the company
22 agrees to bear the full cost of
23 replanting there will be a financial
24 impact to the Ministry as it will again
25 provide the nursery seedlings free of

1 charge and lose up to five years of
2 growing time."

3 That's still the case; is it not?

4 MR. HYNARD: A. That is true.

5 MS. SWENARCHUK: Could we turn to page 12
6 of the report, please. In the middle of the page we
7 see the compilation of cost expended on FMA activities.
8 The sixth paragraph indicates that FMA-related
9 expenditures are forecasted to rise to approximately
10 \$46-million in 84/85, to approximately \$116-million by
11 86/87. Expenditures by year and by activity from '80
12 to '81 are then outlined.

13 Now, we searched as many sources as we
14 could to arrive at the cost for silviculture in the
15 years from 84/85 to the present and were not able to
16 come up with any figure in the public domain, and I
17 wonder if we can have production of those figures, Mr.
18 Freidin, basically if this table could be updated to
19 the present year.

20 MR. FREIDIN: Yes, that's fine.

21 MS. SWENARCHUK: Q. Now, looking back at
22 page 18 with respect to site preparation as we saw, the
23 Auditor found that:

24 "MNR does not assess the site to
25 determine whether or not a satisfactory

1 ground condition exists before planting
2 on FMA lands although it does on non-FMA
3 lands."

4 My question here is: Is there any
5 monitoring done by the Ministry with regard to the
6 environmental effects of site preparation on FMA lands?

7 MR. KENNEDY: A. I would suggest that
8 the cut inspection reports that have traditionally been
9 used by the Ministry to inspect areas that have been
10 harvested, inherently in them was a direction to staff
11 to observe the activities that are being carried out on
12 all areas, not just FMA areas, those areas on Crown
13 lands as well, and record the observations.

14 The area inspection process is one that
15 has evolved from the cut inspection reports and that
16 new initiative is described in Panel 16. It is --
17 specifically in that area inspection report will be a
18 requirement to look at compliance with both groundrules
19 and such things as the Code of Practice to ensure that
20 there is a recognition of any activity taking place out
21 there and to advise the appropriate people for
22 follow-up action if required.

23 Q. So that's a future proposed action;
24 is it?

25 A. Yes, it is.

1 Q. So to this point then, I take it
2 there has been no monitoring of these effects?

3 A. I would say it is enhancement to the
4 activities that have occurred over the years, and by
5 that I am referring to the cut inspection report which
6 was a document used primarily for scaling purposes, but
7 also had information relating to other attributes on
8 the site.

9 Q. Well, have you seen any of those
10 reports, Mr. Kennedy, that made specific reference to,
11 for example, environmental effects of site preparation
12 techniques on FMA lands?

13 A. I can advise you that I have seen
14 many cut inspection reports. The staff in Dryden
15 regularly conducted inspections on the FMA area at the
16 time that I was there, and I can advise that I don't
17 recall any instances being reported of that fashion.

18 Q. Thank you. Could we look at page 20
19 of the report, please. I guess this question goes back
20 to Mr. Waito. There is a listing here of the types of
21 information considered essential by the Auditor in
22 ultimate success of regeneration.

23 Would you like to take a second and read
24 the page -- actually the two pages.

25 THE CHAIRMAN: Ms. Swenarchuk, we are

1 proposing to take an afternoon break, perhaps this
2 would be an appropriate time to do it and come back to
3 your questions after the break.

4 MS. SWENARCHUK: How long were you
5 proposing to sit, Mr. Chairman?

6 THE CHAIRMAN: No later than five, a
7 quarter to five or something like that.

8 MS. SWENARCHUK: Thank you.

9 THE CHAIRMAN: Thank you.

10 MR. FREIDIN: Can we get an indication
11 from Ms. Swenarchuk how long we are going to be? I
12 understand we have a meeting with Mr. Turkstra tomorrow
13 and I would like some sense of whether we are going to
14 get into re-examination at all tomorrow.

15 MS. SWENARCHUK: Frankly, I expected
16 things to go much faster than they are, so I think I
17 will certainly take part of tomorrow and it might even
18 be most of it.

19 MR. FREIDIN: We don't start until eleven
20 tomorrow?

21 THE CHAIRMAN: At least 10:30, possibly
22 11:00. I understand the meeting with Mr. Turkstra is
23 taking place at nine in the Board's boardroom over on
24 the 12th floor of this building. He indicated to the
25 Board that the meeting shouldn't take more than an hour

1 to an hour and a half at the outside.

2 MR. FREIDIN: I haven't canvassed the
3 witnesses as to what arrangements they have made to
4 catch the plane, not in Thunder Bay, but in Toronto to
5 get home. How late does the Board hope to sit
6 tomorrow?

7 THE CHAIRMAN: Well, you might check the
8 plane schedules perhaps and tell us. We would like to
9 go tomorrow again probably not later than 4:30, a
10 quarter to five, if we can, because I think there are
11 some flights going back up tomorrow evening; are there
12 not?

13 MS. BLASTORAH: Well, Mr. Chairman, there
14 are some of the witnesses that just don't go to Thunder
15 Bay but go points north of there and they have to make
16 connecting flights.

17 MR. GREENWOOD: Mr. Chairman, the
18 people -- the consensus of those around me are that we
19 would be quite willing to stay late and take later
20 flights if we can finish tomorrow, including
21 re-examination.

22 THE CHAIRMAN: Do you have any idea, Mr.
23 Freidin, how long you are going to be in re-examination
24 at this point?

25 MR. FREIDIN: Two hours maybe, an hour to

1 two hours. That's at this point.

2 MS. SWENARCHUK: I think there is a good
3 chance that everything will be completed, I just can't
4 guarantee it.

5 THE CHAIRMAN: Well, why don't some of
6 the parties who have to go elsewhere at least try and
7 get an indication of when your last flight might be.
8 That would give us maybe an outside figure to shoot for
9 and we will try and finish tomorrow if we can.

10 MS. SWENARCHUK: If it is at all helpful,
11 I think that my questions will be primarily continuing
12 to Mr. Hynard, Mr. Waito, Mr. Kennedy. I think I have
13 one question for Mr. Hogg but, frankly, not for the
14 other panel members.

15 THE CHAIRMAN: It is up to you, Mr.
16 Freidin, whether you would want any of your panel to be
17 absent for any of the questions.

18 MR. FREIDIN: No, I want them here.

19 THE CHAIRMAN: We will come back in 20
20 minutes and go from there. Thank you.

21 ---Recess taken at 3:30 p.m.

22 ---On resuming at 3:55 p.m.

23 THE CHAIRMAN: Thank you. Be seated,
24 please.

25 MS. SWENARCHUK: Q. So, Mr. Waito, we

1 were looking at the top half of page 20 and this is the
2 Auditor's list of critical information in his view:

3 "To properly manage and maximize the
4 potential of the new timber stand."

5 Do you agree with the listing of criteria
6 that he has specified there?

7 MR. WAITO: A. I think all of the
8 information that he has listed is of value and is
9 important for sure.

10 Q. Now, is it not true that with respect
11 to FMA regeneration results the returns to the Ministry
12 do not include all of that information?

13 A. That's correct. In fact, FMAs do not
14 report on anything listed there.

15 Q. Thank you. Now, as I understand this
16 report, the next section having to do with
17 silvicultural information systems is not specific to
18 FMAs, but pertains to non-FMAs areas as well, although
19 since it is not distinguished, it may well pertain to
20 both and I will ask you about that.

21 However, he has some concerns about
22 assessments not being completed, that's section (a) of
23 that section of his report, and he notes that survival
24 assessments and five-year and free to grow stocking
25 assessments are required but that planned assessments

1 were either not carried out or only partially completed
2 in many districts.

3 Would that not still be the case, Mr.
4 Waito?

5 A. Yes, that is the case.

6 Q. Is that part of the problem with the
7 rather inconsistent results that we received in
8 response to Interrogatory No. 15?

9 A. Not necessarily inconsistent results,
10 but our database is lacking.

11 Q. Inconsistent in the sense that there
12 isn't a standardized information collection and
13 analysis system in place for silvicultural results in
14 all districts; isn't that correct?

15 A. That's a fair characterization.

16 Q. And on page 21 he has indicated in
17 the second paragraph that:

18 "Assessments are not mandatory on some of
19 the more significant regeneration
20 activities being undertaken by the
21 Ministry. For example, regeneration by
22 planting seeds rather than planting
23 seedling trees accounted for so many
24 acres, yet assessments of the success of
25 this method are not required to be done

1 under the Ministry's guidelines."

2 Are they now required, Mr. Waito?

3 A. I don't know about using the word
4 required. Assessments are done by the unit foresters,
5 by the timber staff in the districts of -- on the areas
6 that they have either planted or seeded.

7 Assessments are made, not necessarily are
8 they all formal assessments, but I couldn't really
9 comment as to whether it is required or not. I don't
10 believe it is a requirement or a mandatory requirement
11 that a certain level of assessment be done.

12 MR. FREIDIN: Mr. Chairman, perhaps I
13 should just advise, in relation to a lot of the
14 questions that Ms. Swenarchuk is asking about records
15 of, you know, monitoring and what sorts of records you
16 have, I haven't said anything to this point but I
17 should just advise that Panel 16, which is going to
18 deal with compliance monitoring in terms not only of
19 non-timber values but timber values directly, addresses
20 the sort of thing that is being discussed here, the
21 audits and monitoring and the type of information you
22 get in terms of regeneration success.

23 THE CHAIRMAN: Will it deal with the
24 monitoring with respect to the access of both
25 harvesting, regeneration and all of the facets of

1 activities that the Ministry carries out?

2 MR. FREIDIN: Yes, that is the case.

3 There may be certain exceptions in that where we have
4 specifically dealt with some monitoring. For instance,
5 compliance monitoring is the evidence of a prescribed
6 burn in this panel.

7 In Panel 12 and 13 you will hear
8 specifically on compliance and effectiveness
9 monitoring. So in relation to those topics we are not
10 going to repeat that evidence, but in relation to
11 access, harvest and renewal you will hear -- and
12 maintenance, you will hear evidence in terms of the
13 sorts of subject matters being dealt with in the
14 questions by Ms. Swenarchuk.

15 MS. SWENARCHUK: Well, Mr. Chairman, that
16 creates a bit of a problem for me. I have numerous
17 references to information data available or not
18 available through our interrogatories as well and some
19 of which I plan to review with those witnesses. This
20 is the regeneration panel.

21 Not having had the chance to study Panel
22 No. 16, I don't want to take the risk of passing over
23 these questions now and finding that Panel 16 does not
24 deal in detail with those regeneration issues. It
25 seems to me that this is the appropriate time to review

1 those and to the extent that Panel 16 deals with the
2 same questions, I won't have to ask questions then.

3 MR. FREIDIN: Well, Mr. Chairman --

4 THE CHAIRMAN: It is going to be one or
5 the other.

6 MS. SWENARCHUK: Agreed.

7 THE CHAIRMAN: I mean, if you are going
8 to ask the questions now with respect to regeneration
9 and monitoring, you won't be asking those questions in
10 16 when we deal with that at that point.

11 MS. SWENARCHUK: That's right.

12 MR. FREIDIN: Mr. Chairman, I would like
13 an opportunity to just respond to the comment made by
14 Ms. Swenarchuk. I am somewhat taken by surprise.

15 The purpose that we adjourned for three
16 months to provide all of our evidence was so that
17 parties could in fact know the entire case, would know
18 what evidence was going to be dealt with where so that
19 matters could be scoped including cross-examination.

20 As I say, I don't like to interrupt
21 cross-examination. This panel was put forward, I think
22 quite clearly stated at the beginning of the panel, to
23 deal with on-the-ground silvicultural activity of
24 renewal.

25 Now, there is no question the areas that

1 Ms. Swenarchuk is dealing with do have some
2 relationship to that activity, but I just wanted to
3 raise the point that this matter is dealt with, there
4 are witnesses prepared to deal specifically with this
5 line of questioning.

6 I am not in any way suggesting that she
7 should be perhaps limited now, I just wanted to let you
8 know that we are going to be calling evidence on this
9 matter, and the Board should be aware of that as well.

10 THE CHAIRMAN: Well, you know, this is
11 something that happens from time to time and concerns
12 the Board because we are looking at the hearing in its
13 overall context and we have tried to design procedures
14 to put the parties on notice as to what structure the
15 various parties, including the proponent, has used to
16 put in their case.

17 And all parties are fully aware at this
18 point of what panels are dealing with what and what
19 evidence is to be led in what panels. And for us to
20 always be faced with the problem at this stage that, I
21 better ask the question now in case it is not dealt
22 with later, and then you have a case organized in such
23 a fashion that there is a panel dealing precisely with
24 the topic of compliance monitoring or reporting or
25 things like that, then perhaps it is repetitive to get

1 into it now.

2 MS. SWENARCHUK: Well, Mr. Chairman, just
3 as I don't think I repeated any of the material from
4 Panel 4, and I reviewed that carefully before preparing
5 this, you have my commitment that won't be repeated in
6 Panel 16. I think that on a panel dealing with
7 regeneration --

8 THE CHAIRMAN: But the problem, Ms.
9 Swenarchuk, is this, is that you may not repeat the
10 questions, but the proponent will probably put all of
11 the evidence in in direct in 16 because that is where
12 they have chosen to deal with the topic of monitoring
13 and --

14 MS. SWENARCHUK: But to the extent those
15 issues have been dealt with now, the proponent will not
16 be required to lead direct evidence on them either at
17 that time.

18 THE CHAIRMAN: Well, that may not be the
19 case. You may be satisfied but somebody else may not
20 be satisfied. I wouldn't presuppose for a moment that
21 the questions that you are going to ask of these
22 witnesses in cross-examination necessarily cover the
23 waterfront, in the sense that other parties may wish to
24 ask different questions based on the evidence as well.

25 MS. SWENARCHUK: I agree, Mr. Chairman.

1 I don't think though that in that context the questions
2 would be repetitive, as long as we are covering
3 different areas.

4 THE CHAIRMAN: Well, what is your concern
5 about not being able to deal with this in Panel 16?

6 MS. SWENARCHUK: Well, I don't object to
7 reviewing my questions and holding until 16 some of
8 those that I plan to ask; however, many of them deal
9 with interrogatories filed in this panel having to do
10 with data available on regeneration success rates or
11 not available, and it seemed to me that this was the
12 appropriate time to deal with that information,
13 certainly this is some overlap.

14 THE CHAIRMAN: Let's ask Mr. Freidin.
15 Are you going to have somebody available on Panel 16,
16 Mr. Freidin, that will be able to deal with
17 regeneration rates and the data involved in terms of
18 regeneration so that when you are dealing with
19 compliance monitoring and data collection witnesses
20 will be available on that panel to deal with it?

21 MR. FREIDIN: If I could just have one
22 moment, please.

23 MS. SWENARCHUK: Can I just point out,
24 Mr. Chairman, I think virtually all the questions that
25 I have asked have had to do with that question.

1 I have asked a few questions about
2 environmental monitoring, but basically it is
3 regeneration success data collection, the degree to
4 which it is broken down, correlated in various ways,
5 the degree to which it is accessible to us for purposes
6 of comparative analysis. I think that is a separate
7 question than monitoring -- compliance monitoring or
8 effects monitoring.

9 THE CHAIRMAN: Well, let's hear from Mr.
10 Freidin if he is going to have witnesses available in
11 16 to deal precisely with those questions.

12 MR. FREIDIN: Well, Mr. Chairman, I
13 didn't hear all those questions, I am sorry. I was
14 just consulting with my client but --

15 THE CHAIRMAN: Okay. Ms. Swenarchuk,
16 would you just repeat in your words what your questions
17 are directed at, then Mr. Freidin, you listen to the
18 question and tell us whether or not in 16 you will have
19 witnesses available to answer those questions.

20 MR. SWENARCHUK: I am simply saying, Mr.
21 Freidin, that the direction of my questions, as I
22 indicated at the beginning this morning, has to do with
23 data collection and analysis pertaining to rates of
24 success or lack of success of regeneration and various
25 methods of regeneration.

1 In the course of some of these materials
2 some monitoring questions arise and it seems to me most
3 sufficient to deal with them here, but that is not the
4 focus of the questions I have been asking, it is not
5 the focus of my interest in this panel.

6 I recognize that monitoring, compliance
7 and effectiveness monitoring will be dealt with later,
8 and I am not dealing in any detail with those questions
9 here.

10 As I said at the beginning, I am
11 attempting to get a complete picture of what data is
12 available to the Ministry and the public on success and
13 lack of success of silvicultural efforts.

14 MR. FREIDIN: I think the best way I can
15 respond to that question is to say that this panel is
16 different than Panel 16 in relation to this issue of
17 regeneration success in that this is the panel that
18 should deal with the results that have been pulled
19 together to date either in-chief or in response to
20 interrogatories, so that's -- but in terms of the
21 process that has been in place, and particularly that
22 is being proposed to be put into place in this Class
23 Environmental Assessment, that is something which deals
24 with -- to be dealt with in Panel 16.

25 So I guess Panel 16 is more -- would

1 answer more of the theory questions, theoretical
2 questions as to what kind of system might give you type
3 of information "x", "y" or "z" and are you looking at
4 doing something in relation to. The way you are going
5 to get information on that, that's probably Panel 16.

6 But, again, the actual success rates or
7 the numbers which have been produced on regeneration, I
8 think that's probably the subject matter of
9 cross-examination of this panel.

10 THE CHAIRMAN: Well, from what you are
11 saying it appears that if Ms. Swenarchuk wants
12 information on what is available now, what is being
13 done now, how you are going about assessing and
14 ascertaining the rates of success now, you are probably
15 right in addressing them to this panel.

16 MR. FREIDIN: I don't think -- the way
17 they are going about -- you see, it is a very difficult
18 line to draw.

19 THE CHAIRMAN: Well, I think she is right
20 in not wanting to take the chance that when she gets
21 there she is met with the argument that what we are
22 dealing with is what we are proposing under the
23 planning process which is the subject of the Class
24 Environmental assessment, and she may be foreclosed at
25 that point from trying to ascertain from this panel

1 some of the things that are actually going on in the
2 field now.

3 I think I would agree with you, Ms.
4 Swenarchuk, that perhaps you better not take the
5 chance.

6 MR. FREIDIN: And perhaps rather than me
7 jumping up and down, if the witnesses believe that it
8 is a matter which is dealt with in monitoring in Panel
9 16 they can indicate that.

10 THE CHAIRMAN: Well, if they can't
11 provide the answers to her question, they can say we
12 can't and they might even be more helpful and indicate
13 but we think somebody in 16 might. But if they know
14 the answer, I think it should be given.

15 MR. FREIDIN: I agree completely and I
16 made the comment perhaps for the assistance of the
17 parties and the Board that know they haven't heard the
18 full story on a certain topic from these witnesses.

19 THE CHAIRMAN: Okay. Go ahead.

20 MS. SWENARCHUK: Q. Mr. Waito, I think
21 we are dealing with the second and third paragraph on
22 page 21. Could I just ask you whether the problem that
23 the Auditor identified in each of those two paragraphs
24 in your view still exists?

25 Let me put it another way: Does the

1 practice that he identified in those two paragraphs
2 still exists?

3 MR. WAITO: A. He indicates that
4 assessments are not mandatory on some of the more
5 significant regeneration activities and that's still
6 the case, they are not mandatory.

7 He also indicates that the success of
8 harvested areas which are left to regenerate naturally;
9 i.e., no planting or seeding, are not given the same
10 high priority as artificial regeneration when it comes
11 to assessing it and that is still the case.

12 Q. Thank you. Now, would you read
13 paragraphs (b) and (c) and indicate whether those
14 problems have changed since the report?

15 A. I think that for the most part
16 district offices are inputting their data into SIS
17 bearing in mind that our SIS system, our silvicultural
18 information system is under review and, as I had
19 indicated earlier, we had hoped that it would be
20 functioning this year but have had some computer
21 problems with it. I think for the most part --

22 Q. Is that a system that will be
23 described for us in more detail in Panel 16?

24 A. Yes, I believe it is. So as I was
25 saying, I believe for the most part district offices

1 and staff complete their SIS information, they complete
2 the reports that are required to record SIS
3 information, or silvicultural assessment information,
4 but I would also add that there are probably instances
5 where what is being described by the Auditor General
6 here still -- those instances probably still occur.

7 Q. I think you indicated in your
8 evidence-in-chief that there is still the problem of
9 lack of analysis of those materials as he specifies --

10 A. Yes, the systems that are intended
11 for use don't do analysis themselves. That's not to
12 say that there is a lack of analysis. The analysis
13 would be done by a forester or the forest technician.
14 So I wouldn't agree that there is a lack of analysis.

15 As a unit forester I analysed my
16 information that I had and I didn't have the current
17 SIS system available to me. So I don't think it is
18 fair to say that no analysis is being undertaken. The
19 computer programs or the system that are being designed
20 are not designed to do that analysis, however.

21 Q. Would you agree though that there is
22 no cumulative analysis across the province of these
23 returns?

24 A. Yes, I would agree with that.

25 Q. Okay. Now, I would like to turn to

1 some of our interrogatories.

2 MS. SWENARCHUK: Mr. Chairman, as I said,
3 I believe that Mr. Mander produced for you a complete
4 package, since some of these have been filed in
5 previous exhibits, rather than flipping back and forth
6 between exhibits.

7 THE CHAIRMAN: Has everything in this
8 package been entered?

9 MS. SWENARCHUK: No, not everything.

10 THE CHAIRMAN: How do you want to handle
11 that? Are you going to enter them singly when you get
12 to those ones, or do you want the the whole package
13 entered?

14 Does everybody have the package, by the
15 way?

16 MS. SEABORN: We don't have that package,
17 Mr. Chairman.

18 MR. CASSIDY: Either do we.

19 MS. SWENARCHUK: You have a list though
20 of the interrogatories that I intend to refer to, that
21 was provided to your offices.

22 MR. HANNA: (nodding negatively)

23 MS. SWENARCHUK: Not yours.

24 THE CHAIRMAN: Do you have an indication
25 on that list which ones have been entered and which

1 ones have not?

2 MS. SWENARCHUK: I have a partial
3 indication, Mr. Chairman. FFT Interrogatory No. 8 is
4 Exhibit 536, No. 5 is Exhibit 545, No. 6 is Exhibit
5 546, No. 18 is Exhibit 538, and No. 15 was filed of
6 course and I am not clear of the exhibit number on
7 that.

8 MS. BLASTORAH: Ms. Swenarchuk, could you
9 go through those numbers again? I don't believe they
10 are on the list that we received. Perhaps I just
11 misunderstood. If you could just read the numbers out
12 again.

13 MS. SWENARCHUK: Perhaps I could provide
14 that to you later, Ms. Blastorah, I am not starting
15 with those interrogatories.

16 THE CHAIRMAN: Why don't we handle it
17 this way: Why don't you, Ms. Swenarchuk, get together
18 with, say, counsel for MNR at the end of the day and
19 just indicate or note yourselves which ones have not
20 yet been entered and then perhaps we can, first thing
21 tomorrow when we commence, make sure that we have
22 entered the ones that you have or will be referring to
23 that have not already been entered.

24 MS. SWENARCHUK: All right.

25 THE CHAIRMAN: Just so that we haven't

1 missed any at some point down the road.

2 MS. BLASTORAH: My other concern, Mr.
3 Chairman, and I think that will address it, is that all
4 of our witnesses have copies of them and my only
5 concern in raising the question was that if they
6 weren't on the list the witnesses may not have copies
7 here, but I think that will address the problem.

8 THE CHAIRMAN: Okay.

9 MS. SWENARCHUK: My first question has to
10 do with Interrogatory No. 2 which pertains to page 94
11 of the witness statement, and I believe this is a
12 question for Mr. Hynard.

13 First of all, you will notice Mr.
14 Chairman, that we asked for the areas in hectares
15 regenerated naturally after harvest by each of the
16 methods discussed for each of the past 10 years, and
17 the response indicated that the Ministry does not
18 provide data on areas regenerated in this method.

19 The next part of the question indicated
20 that -- or requested whether natural regeneration was
21 specified in advance in the timber management plans for
22 these areas as the intended method of regeneration, and
23 the response refers to plans prepared under the new
24 Timber Management Planning Manual for Crown lands in
25 Ontario.

1 Q. However, I would like to repeat my
2 question, Mr. Hynard: Whether, to your knowledge, the
3 areas left for natural regeneration as specified in sub
4 (a) of the question were specifically designated for
5 natural regeneration in the plans in effect that
6 affected these areas?

7 Your response only referred to current
8 plans, but our question was directed to previous plans.

9 MR. HYNARD: A. Your question 2(b)
10 really relates to question 2(a). You are asking: Of
11 those areas that were regenerated by each of those
12 three methods, was it specified in advance.

13 We were unable to provide you with that
14 answer of how much had been regenerated by each of
15 those three methods for the simple reason that we don't
16 keep our records in that fashion. In fact, of those
17 three methods natural regeneration might include two or
18 all three types in any one project area. It is not
19 simply workable or useful to separate them in that
20 fashion.

21 Not being able to provide you that answer
22 for those reasons, we really can't answer: Were those
23 particular areas specified in advance, question 2(b),
24 and our answer to it was to describe to you how natural
25 regeneration treatments and methods are specified in

1 the timber management planning process.

2 Your question also asked about old plans
3 and the old planning process: Were natural
4 regeneration methods specified in them? Yes, they
5 would be in a different fashion. Were they specified
6 by those three methods? I am not sure, I can't answer
7 that.

8 I group the three methods in this fashion
9 for the purposes of the hearing: Coppice, natural
10 regeneration or advanced growth and natural seeding. I
11 simply grouped it that way so that the Board and the
12 interested parties could understand better how natural
13 regeneration systems function.

14 Q. Do you have information, Mr. Hynard,
15 with respect to the question of whether all areas that
16 have been left for natural regeneration, by whatever
17 method, were left in that form because the timber
18 management plan prescribed natural regeneration in
19 advance?

20 A. Yes, I understand your question. No,
21 that wouldn't be the case. They may have prescribed
22 artificial regeneration methods to a commercially
23 preferred species and yet the area was left untreated
24 and allowed to regenerate naturally to other species
25 because of a lack of funds to carry out treatment, for

1 example. That's possible, yes.

2 Q. And that is still possible; is it
3 not?

4 A. Yes, that's still possible.

5 Q. Okay. My next question refers to
6 Interrogatory No. 5 which is Exhibit 545. Mr. Waito,
7 this is an appropriate question for you; is it not?

8 Now, we asked for quantitative
9 documentation to support the statement that:

10 "Tree planting is generally acknowledged
11 to offer the best opportunity for success
12 in achieving prescribed conifer
13 regeneration levels."

14 I take it from the answer, which did not
15 provide any quantitative documentation, that such
16 documentation is not available to the Ministry?

17 MR. WAITO: A. I wasn't aware of any or
18 I am not aware of any. There may be specific studies
19 that may have been done that compared, for instance,
20 planting a particular species versus seeding.

21 I wasn't aware of any at that time and
22 when I made the statement in the statement of evidence
23 it was not with the intent of having a whole bunch of
24 studies to back it up, it was just based on what has
25 been my common belief as a forester and I think what

1 has been the common belief -- or what is the common
2 belief of most foresters who are practising forestry in
3 Ontario. It was simply in that context that the
4 statement was made.

5 Q. Okay. Now, in the second paragraph
6 of your response you indicate:

7 "While this quotation is not quantitative
8 it nevertheless supports the opinion that
9 conifer seedlings, which are established
10 from seed, have a greater risk of dying
11 than do young planted trees."

12 So you have there, I take it, compared
13 tree planting to seeding in terms of success?

14 A. Well, natural regeneration from seed
15 which could be direct seeding in the case of artificial
16 regeneration or natural seeding in the case of black
17 spruce and modified cutting, for example.

18 Q. Okay. Now, that's a comparison with
19 seeding, but what about a comparison between planting
20 success, for example, and natural regeneration through
21 modified cutting? Would you maintain the same
22 statement with regard to comparative rates of success
23 for those two methods?

24 A. I think generally I would maintain
25 the same position, but I would qualify it because, as

1 we have said earlier, modified cutting and success of
2 modified cutting is extremely site-dependent, and
3 information that we provided in response to
4 Interrogatory 15 indicated that you can get extremely
5 good regeneration results from natural regeneration.

6 In fact, Mr. Hynard indicated this
7 morning that the kind of stocking that you can get on
8 some of those sites from natural regeneration, in many
9 cases, may even exceed what you may get if you were to
10 plant the same site.

11 So, again, it is very site-specific,
12 but -- in general though I still believe that tree
13 planting offers the better opportunity. There is a
14 lower risk generally speaking.

15 Q. By generally speaking do you mean on
16 a larger variety of sites? What do you mean by that?

17 A. On the vast -- well, I could talk
18 about larger variety of sites. It is my opinion that
19 on the vast majority of sites in the boreal forest, if
20 the objective is to regenerate conifer species the
21 lowest risk renewal method is tree planting, but under
22 site conditions, again, I am thinking of lowland black
23 spruce situations, the risk may be equal, it may have
24 just as good a chance of success as you would have with
25 planting.

1 Q. When you make that assessment, Mr.
2 Waito, does the fact that 89 per cent of the harvest is
3 by clearcutting in any way, in your view, affect the
4 comparative success rates of natural regeneration and
5 planting?

6 A. The size of clearcut can affect the
7 success of natural regeneration, for instance, of black
8 spruce simply because when regenerating black spruce
9 naturally and relying on strip or modified block cuts,
10 the distance from the seed source is very critical. So
11 that the size of clearcut would have an effect there.

12 But my opinion that size of clearcut when
13 it comes to strictly looking at whether it affects the
14 success of artificial regeneration planting versus
15 seeding, I don't think has any effect other than a
16 qualifier with respect to natural regeneration of black
17 spruce.

18 Q. Well, that leads into the next
19 interrogatory which I was going to discuss which is
20 Interrogatory No. 9 where we asked for the position of
21 the Ministry on the question of whether the size of the
22 clearcut influences the success of regeneration by
23 natural seeding, and the answer there is essentially
24 what you have given us now.

25 Now, I take it from your answer that

1 modified cutting for black spruce regeneration in some
2 areas could be and is a relatively successful means of
3 facilitating regeneration. We have heard in previous
4 evidence from Mr. Hynard, and also in response to our
5 Interrogatory No. 28(d), that at this time no FMA
6 holders are compensated for modified cutting.

7 Now, could you tell us why the Ministry
8 has pursued this policy of not providing any
9 compensation for modified cutting?

10 A. Well, I wasn't privy to the
11 discussions when FMAs were initially developed or
12 hatched, shall we say, but I think one of the main
13 reasons for not compensating for modified harvest
14 cutting was the fact that a significant portion of cost
15 of modified harvest cutting is incurred in additional
16 road costs.

17 And since the MNR was prepared at that
18 time to fund a certain amount of the roads that were
19 built on FMAs, that the feeling may have been that
20 since we were compensating for roads indirectly, not
21 necessarily strictly for modified harvest cutting, that
22 they took that position and said: We would not pay for
23 modified harvest cutting as a renewal treatment.

24 That's a general understanding of what
25 one of the reasons may have been. I don't know if Mr.

1 Hynard is aware of anything else as a result of his
2 experience as FMA coordinator but...

3 MR. HYNARD: A. I wasn't privy either
4 and I have always had that same understanding. I would
5 certainly be concerned from a very practical and
6 pragmatic point of view if the Ministry were to make
7 payments for modified cutting. Virtually all of the
8 cutting down on -- or a very high percentage of the
9 cutting done on my unit is in a modified form.

10 It is the normal way in which companies
11 cut and do business, their operations are profitable.
12 If I were -- if it were to be necessary for me to pay
13 those companies for their extra costs of cutting in
14 that fashion it would bankrupt me; I would have no
15 money to do anything.

16 Q. Let's restrict the discussion to the
17 boreal forest then, and specifically FMAs. If I recall
18 correctly from Mr. Oldford's testimony the amount of
19 compensation currently being paid for road building on
20 the FMAs is reduced from what it was in the past, and I
21 believe that he indicated that - to use Diefenbaker's
22 term - the roads to resources have been largely built,
23 the road structure is now in place and so less
24 compensation for that purpose is necessary.

25 That being the case, is it your view that

1 there would be some advantages now in providing
2 encouragement to the companies to use modified cutting
3 which then eliminates the need for the expensive option
4 of planting some of those areas?

5 MR. WAITO: A. It is my own personal
6 opinion that - and it differs from Ministry policy, I
7 might add - it is my own personal opinion that payment
8 for modified harvest cutting could be a legitimate
9 option. It is our policy and has been our policy up
10 until this point not to pay for modified harvest
11 cutting.

12 You make a valid point in that the amount
13 of money available for -- not only are a lot of the
14 roads in place, but the amount of money available for
15 road construction, and the FMA program has declined
16 over the past few years, and I think it is an option.
17 Again, it is my personal opinion that should be
18 explored or they could be explored by the Ministry.

19 MR. HYNARD: A. Another alternative, Ms.
20 Swenarchuk, would be to make an area payment for
21 regeneration to the FMA holder and have the FMA holder
22 determine for that site-specific case which was the
23 cheaper method to produce the acceptable results,
24 clearcut and plant or strip cut and go for natural and
25 have a straight area of payment made.

1 That way we are not paying for modifying
2 their cutting but rather we are paying for the product
3 of a regenerated stand and the FMA holder then would
4 have the option of either choice, his decision on that
5 site-specific case which one would work better.
6 Something -- an incentive of that type might be helpful
7 in expanding the use of modified cutting to regenerate
8 black spruce under appropriate conditions.

9 Q. And is it your view that such an
10 approach would lead to any saving of public funds in
11 the long term?

12 A. I certainly think it would be worth
13 exploring, yes. One of things you have been headed
14 towards --

15 Q. Careful, Mr. Hynard.

16 A. --headed towards for so long now, and
17 to be helpful to you, you will recall that I said back
18 in, it was still in 11, that generally speaking natural
19 regeneration methods are preferred because of their
20 lesser cost where they can produce an acceptable stand.

21 The difficulty with modified cutting or
22 strip cutting for black spruce, for example, is that
23 the cost savings or the extra costs incurred by the
24 company to conduct strip cutting are not balanced, on
25 the other hand, by the renewal savings to the company

1 in reducing the amount of tree planting, and I think
2 that's an obstacle.

3 If you have read through all the papers
4 that have been referenced in 10 and 11 you would have
5 noticed that point arises in several of them.

6 So I do think that's worth exploring.
7 There may be a possibility for saving public funds,
8 there may be a possibility for expanding that system on
9 appropriate sites and, for that reason, I think that it
10 is worth exploring. I am not saying that that would be
11 the outcome, but it is certainly worth looking at.

12 MS. SWENARCHUK: If you were planning to
13 stop at about a quarter to five, Mr. Chairman, this
14 would be an appropriate time.

15 THE CHAIRMAN: Okay.

16 MR. FREIDIN: Can we get an indication of
17 how you are doing, Ms. Swenarchuk, in terms of time?

18 MR. DUFF: Not very well.

19 MS. SWENARCHUK: I think a couple more
20 hours probably will do it.

21 MR. FREIDIN: Thank you.

22 THE CHAIRMAN: What about tomorrow? Have
23 any of the parties had an opportunity to indicate when
24 we might have to terminate by tomorrow?

25 MR. GREENWOOD: In terms of the panel, we

1 can fly late. There are flights out in the evening.

2 THE CHAIRMAN: Okay. I think the Board
3 is reluctant to start tomorrow before eleven. We could
4 start at 10:30 perhaps.

5 What I am reluctant to do is, I don't
6 want to curtail the meeting with Mr. Turkstra tomorrow
7 because it may be one of the last opportunities for the
8 parties to get together with him prior to him making
9 some contact with Dr. Baskerville result from your
10 discussions.

11 MR. FREIDIN: Mr. Chairman?

12 THE CHAIRMAN: Perhaps we could set it
13 ahead to 10:30. I would suggest, since we are in the
14 same building for that meeting at nine o'clock, he
15 should be able to finish about a quarter after ten or
16 thereabouts. If it turns out that he is going to be
17 longer with you, then advise the Board, we are down
18 there and we will come in at eleven.

19 MR. FREIDIN: Would the Board be here if
20 Mr. Turkstra in unTurkstra-like fashion is able to deal
21 with this matter in lesser time?

22 THE CHAIRMAN: Yes. The Board will be on
23 hand, so if you want to advise us we will come up
24 earlier.

25 MR. FREIDIN: Thank you, Mr. Chairman.

1 THE CHAIRMAN: So perhaps we will leave
2 it on this basis, we will be up here at 10:30 unless we
3 are advised differently.

4 MS. BLASTORAH: Mr. Chairman, one other
5 matter. I believe you were going to discuss -- come
6 back and discuss the date for the Panel 10
7 statements -- Panel 14 statements of issues.

8 THE CHAIRMAN: We haven't discussed it
9 amongst ourselves yet, so perhaps we will have to wait
10 until tomorrow to do that.

11 MS. BLASTORAH: Thank you, Mr. Chairman.

12 THE CHAIRMAN: Thank you.

13 ---Whereupon the hearing adjourned at 4:40 p.m., to be
14 reconvened on Friday, June 2, 1989, commencing at
15 10:30 a.m.

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